



भारत का राजपत्र The Gazette of India

प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

He2

सं. 17]

नई दिल्ली. शनिवार, अप्रैल 27, 2002/वैशाख 7, 1924

No. 17]

NEW DELHI, SATURDAY, APRIL 27, 2002/VAISAKHA 7, 1924

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिसमें कि यह अलग संकलन के रूप में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (II) PART II—Section 3—Sub-Section (II)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(other than the Ministry of Defence)

कार्मिक, लोक शिकायत तथा पेंशन मंत्रालय

(कार्मिक और प्रशिक्षण विभाग)

नई दिल्ली, 15 अप्रैल, 2002

का. आ. 1361.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार की अधिसूचना सं०. एचडी 165 पी सी आर 2001 दिनांक 28 सितंबर, 2001 द्वारा प्राप्त कर्नाटक राज्य सरकार की सहमति से दिल्ली विशेष पुलिस स्थापना, के. अ. व्यूरो, ए सी बी, बंगलौर में दर्ज नानला आर सी-27 (ए)/2001-बंगलौर में श्री पी. रोहिदास नायक, प्रबन्धक (स्वैच्छिक सेवानिवृत्ति योजना के अंतर्गत 5-5-2001 को सेवानिवृत्त), सिडिकेट बैंक, एम टी एम सी

शाखा, गुलबर्ग और श्री के. आनंद राव, गैर सरकारी व्यक्ति प्रोपराइटर (i) सिधिशान्त इंजीनियरिंग इंस्टीट्यूट और (ii) अमर दाता सिस्टम प्राइवेट लि., बंगलौर और अन्य लोक सेवक अथवा व्यक्ति के विरुद्ध भारतीय दंड संहिता, 1860 की धारा 120-बी संपठित धारा 420 और भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 49) की धारा 13 (2) संपठित धारा 13 (1) (डी) के अखीन दंडनीय अपराधों और उपर्युक्त अपराधों में से एक अथवा अधिनियम से संबंधित अथवा संयुक्त प्रयत्नों, दुष्प्रेरणों और षडयंत्र तथा उसी संयवहार के अनुक्रम में किए गए अथवा उन्ही तथ्यों से उद्भूत किसी अन्य अपराध और अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण कर्नाटक राज्य पर करती है।

[सं. 228/19/2002-ए. वी. डी II (i)]

परमा नन्द, अवर सचिव

MINISTRY OF PERSONNEL, PUBLIC GRIEVANCES
AND PENSION

(Department of Personnel and Training)

New Delhi, the 15th April, 2002

S.O. 1361.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Karnataka vide Notification No. HD 165 PCR 2001, dated 28th September, 2001, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Karnataka for investigation of offences punishable under Sections 120-B read with 120 of the Indian Penal Code, 1860 and section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 (Act No. 49 of 1988) and attempts, abetments and conspiracy in relation to or in connection with one or more of the offence mentioned above and any other offence and offences committed in the course of the same transaction or arising out of the same facts against Shri P. Rohidas Nayak, Manager (Retd. on 5-5-2001 on VRS), Syndicate Bank, MTMC Branch, Gulbarga and K. Anand Rao, private person Prop. of (i) Sidhishanth Engineering Institute and (ii) Amara Data System Private Limited, Bangalore and other public servant or person registered with DSPE/CBI/ACB/Bangalore vide RC-27(A)/2001-BLR.

[No. 228/19/2002-AVD.II(i)]

PARMA NAND, Under Secy.

नई दिल्ली, 15 अप्रैल, 2002

का. आ. 1362.—केन्द्रीय सरकार एवम् द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार की अधिसूचना सं. एच डी 179 पी सी आर 2001 दिनांक 18 अक्टूबर, 2001 द्वारा प्राप्त कर्नाटक राज्य सरकार की सहमति से दिल्ली विशेष पुलिस स्थापना, के. अ. व्यूरो, ए सी बी, बंगलौर में दर्ज मामला आर सी-29 (ए)/2001-बंगलौर में (1) श्री श्रीयुत्स एस. गोपालकृष्ण, पूर्व सहायक महाप्रबंधक, भारतीय स्टेट बैंक, एस एस आई साउथ ब्रांच बंगलौर (2) श्री प्रहलाद राव, अधिकारी, एस बी आई, पूर्व उप प्रबंधक (विज्ञापन) एस एस आई साउथ ब्रांच बंगलौर (3) मैसर्स ब्लू स्ट्रीट फैशन प्राइवेट लिमिटेड, नं. 854, पी. पी. इंडस्ट्रियल एरिया, दीपांजलि नगर, मैसूर रोड, बंगलौर और अन्य लोक सेवक अथवा व्यक्ति के विरुद्ध भारतीय दंड संहिता, 1860 की धारा 120-बी संपठित धारा 420 और भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 49) की धारा 13 (2) संपठित धारा 13 (1) (डी) के अधीन दंडनीय अपराधों और उपर्युक्त अपराधों में से एक अथवा अधिक से संबंधित अथवा संसक्त प्रयत्नों, दुष्प्रेरणों और षडयंत्र तथा उसी संव्यवहार के अनुक्रम में किए गए अथवा उन्हीं तथ्यों

से उद्भूत किसी अन्य अपराध और अपराधों के अन्वेष के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण कर्नाटक राज्य पर करती है।

[सं. 228/19/2002-ए. वो. डी. II (ii)]

परमा नन्द, अवर सचिव

New Delhi, the 15th April, 2002

S.O. 1362.—In exercise of the powers conferred by sub-section (1) of Section 5 read with Section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Karnataka vide Notification No. HD 179 PCR 2001, dated 18th October, 2001, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Karnataka for investigation of offences punishable under Sections 120-B read with 420 of the Indian Penal Code, 1860 and Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, 1988 (Act No. 49 of 1988) and attempts, abetments and conspiracy in relation to or in connection with one or more of the offence mentioned above and any other offence and offences committed in the course of the same transaction or arising out of the same facts against (1) Shri Sriyuths S. Gopalakrishna, Former Assistant General Manager, State Bank of India, SSI South Branch Bangalore (2) Shri Prahlad Rao, Officer, SBI, Former Deputy Manager (Adv.) SSI South Branch, Bangalore (3) M/s. Blue Street Fashions Private Limited No. 854 P. P. Industrial Area, Deepanjali Nagar, Mysore Road, Bangalore and other public servant or person registered with DSPE/CBI/ACB/Bangalore vide RC-29(A)/2001-BLR.

[No. 228/19/2002-AVD.II(ii)]

PARMA NAND, Under Secy.

नई दिल्ली, 17 अप्रैल, 2002

का.आ. 1363.—केन्द्रीय सरकार एवम् द्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार अधिसूचना सं. एच डी 208 पीसीआर 2001 दिनांक 12 दिसम्बर, 2001 द्वारा प्राप्त कर्नाटक राज्य सरकार की सहमति से दिल्ली विशेष पुलिस स्थापना, के.अ. व्यूरो, एसीबी, बंगलौर में दर्ज मामला आरसी-34(ए)/2001-बंगलौर में (1) श्री एस. भास्कर, पूर्व कार्यकारी निमाता, दूरदर्शन केन्द्र, बंगलौर (2) श्री एस.वी. शिवकुमार, प्रोपराइटर, मैसर्स ट्रांसवल्ड विजन, नं. 2617, 26वां मेन, 37वां क्रॉस, 9वां ब्लॉक, जयानगर, बंगलौर-67 और अन्य लोक सेवक अथवा व्यक्ति के विरुद्ध भारतीय दंड संहिता, 1860 की धारा 120-बी संपठित भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 49) की धारा 13 (2) संपठित धारा 13 (1) (डी) के अधीन दंडनीय अपराधों और उपर्युक्त अपराधों में से एक अथवा अधिक से संबंधित अथवा संसक्त प्रयत्नों, दुष्प्रेरणों और षडयंत्र तथा उसी संव्यवहार के अनुक्रम में किए गए अथवा उन्हीं तथ्यों से उद्भूत किसी अन्य अपराध और अपराधों के अन्वेषण के लिए दिल्ली विशेष

पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण कर्नाटक राज्य पर करती है।

[सं. 228/20/2002-ए.वी.डी.-II(i)]

परमा नन्द, अवर सचिव

New Delhi, the 17th April, 2002

S.O. 1363.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Karnataka vide Notification No. HD/208/PCR/2001, dated 12th December, 2001, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Karnataka for investigation of offences punishable under section 120B of the Indian Penal Code, 1860 read with section 13(2), read with 13(1)(d) of Prevention of Corruption Act, 1988 (Act No. 49 of 1988) and attempts, abetments and conspiracy in relation to or in connection with one or more of the offence mentioned above and any other offence and offences committed in the course of the same transaction or arising out of the same facts against S/Sh. S. Bhaskar, Formerly Executive Producer, Doordarshan Kendra, Bangalore (2) Sh. S. V. Shivakumar, Prop. M/s. Transworld Vision, No. 2617, 26th Main, 37th Cross, 9th Block, Jayanagar, Bangalore-67 and other public servant or person registered with DSPE/CBI/ACB/Bangalore vide RC-34(A)/2001-BLR.

[No. 228/20/2002-AVD. II(i)]

PARMA NAND, Under Secy.

नई दिल्ली, 17 अप्रैल, 2002

का.आ. 1364.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार की अधिसूचना सं. एचडी 22 पीसी-आर 2002 दिनांक 29 जनवरी, 2002 द्वारा प्राप्त कर्नाटक राज्य सरकार की सहमति से दिल्ली विशेष पुलिस स्थापना, के.अ.व्यूरो, एसीबी, बंगलौर में दर्ज मामला आरसी-01(ए), 2002-बंगलौर में (1) श्री संजय नायक, सहायक आयुक्त, सीमा शुल्क, नई दिल्ली और अन्य लोक सेवक अथवा व्यक्ति के विरुद्ध भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 49) की धारा 7 के अधीन दंडनीय अपराधों और उपर्युक्त अपराधों में से एक अथवा अधिक से संबंधित अथवा संसक्त प्रयत्नों, दुष्प्रेरणों और षड्यंत्र तथा उसी संव्यवहार के अनुक्रम में किए गए अथवा उन्हीं तथ्यों से उद्भूत किसी अन्य अपराध और अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण कर्नाटक राज्य पर करती है।

[सं. 228/20/2002-ए.वी.डी.-II(ii)]

परमा नन्द, अवर सचिव

New Delhi, the 17th April, 2002

S.O. 1364.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Karnataka vide Notification No. HD 22 PCR 2002, dated 29th January, 2002, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Karnataka for investigation of offences punishable under section 7 of Prevention of Corruption Act, 1988 (Act No. 49 of 1988) and attempts, abetments and conspiracy in relation to or in connection with one or more of the offence mentioned above and any other offence and offences committed in the course of the same transaction or arising out of the same facts against (1) Shri Sanjay Nayak, Assistant Commissioner of Customs, New Delhi and other public servant or person registered with DSPE/CBI/ACB/Bangalore vide RC-01(A)/2002-BLR.

[No. 228/20/2002-AVD. II(ii)]

PARMA NAND, Under Secy.

नई दिल्ली, 17 अप्रैल, 2002

का.आ. 1365.—केन्द्रीय सरकार एतद्वारा दिल्ली विशेष पुलिस स्थापना अधिनियम, 1946 (1946 का अधिनियम सं. 25) की धारा 6 के साथ पठित धारा 5 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए कर्नाटक राज्य सरकार की अधिसूचना सं. एचडी 179 पीसी-आर 2001 दिनांक 18 अक्टूबर, 2001 द्वारा प्राप्त कर्नाटक राज्य सरकार की सहमति से दिल्ली विशेष पुलिस स्थापना, के.अ.व्यूरो, एसीबी, बंगलौर में दर्ज मामला आरसी-30(ए)/2001-बंगलौर में श्री श्रीयुत्स एस. गोपालकृष्ण पूर्व सहायक महाप्रबंधक, भारतीय स्टेट बैंक एसएसआई साउथ ब्रांच बंगलौर, (2) श्री जी.जी. भट्ट अधिकारी, एसबीआई, पूर्व उप प्रबंधक (विज्ञापन) एसएसआई साउथ ब्रांच बंगलौर, (3) श्री वी.एस. श्रीपति प्रबंधक निदेशक के प्रतिनिधित्व वाली मैसर्स न्टिट्रेक इनफॉर्मेशन टेक्नालोजी प्राइवेट लिमिटेड, नं. 744/51 चित्तल प्लाजा, द्वितीय तल, 23वां क्रॉस, 16वां मेन, चौथा ब्लॉक, जयानगर, बंगलौर और किन्हीं अन्य लोक सेवकों के विरुद्ध भारतीय दंड संहिता, 1860 (1860 का अधिनियम सं. 45) की धारा 120-बी तन्नि धारा 420 और 477-ए तथा भ्रष्टाचार निवारण अधिनियम, 1988 (1988 का अधिनियम सं. 49) की धारा 13 (2) सपठित धारा 13 (1) (डी) के अधीन दंडनीय अपराधों और उपर्युक्त अपराधों में से एक अथवा अधिक से संबंधित अथवा संसक्त प्रयत्नों, दुष्प्रेरणों और षड्यंत्र तथा उसी संव्यवहार के अनुक्रम में किए गए अथवा उन्हीं तथ्यों से उद्भूत किसी अन्य अपराध और अपराधों के अन्वेषण के लिए दिल्ली विशेष पुलिस स्थापना के सदस्यों की शक्तियों और अधिकारिता का विस्तार सम्पूर्ण कर्नाटक राज्य पर करती है।

[सं. 228/21/2002-ए.वी.डी.-II]

परमा नन्द, अवर सचिव

New Delhi the 17th April, 2002

S.O. 1365.—In exercise of the powers conferred by sub-section (1) of section 5 read with section 6 of the Delhi Special Police Establishment Act, 1946 (Act No. 25 of 1946), the Central Government with the consent of the State Government of Karnataka vide Notification No. HD 179 PCR 2001, dated 18th October, 2001, hereby extends the powers and jurisdiction of the members of the Delhi Special Police Establishment to the whole of the State of Karnataka for investigation of offences punishable under sections 120-B read with 420 and 477A of the Indian Penal Code, 1860 (Act No. 45 of 1860) and section 13(2) read with 13(1)(d) of Prevention of Corruption, Act, 1988 (Act No. 49 of 1988) and attempts, abetments and conspiracy in relation to or in connection with one or more of the offence mentioned above and any other offence and offences committed in the course of the same transaction or arising out of the same facts against Sriyuths S. Gopalakrishna, Former Assistant General Manager, State Bank of India, SSI South Branch, Bangalore, (2) Shri G. G. Bhat, Officer, SPI, Former Deputy Manager (Adv.) SSI South Branch, Bangalore, (3) M/s. Stritech Information Technology Private Limited, No. 744/51, Chintal Plaza, 2nd Flor, 23rd Cross, 16th Main, 4th Block, Jayanagar, Bangalore represented by Shri V. S. Sripathy, Managing Director and any other public servants registered with DSPE/CBI/ACB/Bangalore vide RC-30(A)/2001-BLR.

[No. 228/21/2002-AVD.II]

PARMA NAND, Under Secy.

वित्त मंत्रालय

(राजस्व विभाग)

आदेश

नई दिल्ली, 8 अप्रैल, 2002

स्टाम्प

का.आ. 1366.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, केन्द्रीय सरकार एतद्वारा भारतीय औद्योगिक विकास बैंक, मुम्बई को मात्र तीन करोड़ तैंतीस लाख इक्यासी हजार रुपए का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है, जो उक्त बैंक द्वारा जारी किए जाने वाले तीन सौ तैंतीस करोड़ इक्यासी लाख रुपए के समग्र मूल्य के (डीमैटोरियालाइज्ड फार्म में 13190 बंधपत्र और प्रोमिजरी नोटों के स्वरूप में 654430 बंधपत्र) आई डी बी आई नमनीय बंधपत्रों के रूप में वर्णित बंधपत्रों पर स्टाम्प शुल्क के कारण प्रभाय है।

[सं. 21/2002-स्टाम्प/का. सं. 33/30/2002-वि.क.]

आर. जी. छावड़ा, अवर सचिव

MINISTRY OF FINANCE

(Department of Revenue)

ORDER

New Delhi, the 8th April, 2002

STAMPS

S.O. 1366.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits Industrial Development Bank of India, Mumbai to pay consolidated stamp duty of rupees three crore thirty three lakh eighty one thousand only chargeable on account of the stamp duty on bonds described as IDBI Flexibonds-12 (13190 Bonds in the dematerialised form and 654430 Bonds in the form of Promissory notes) aggregating to rupees three hundred thirty three crore eighty one lakh only, to be issued by the said Bank

[No. 21/2002-STAMPS/F. No. 33/30/2002-ST]

R. G. CHHABRA, Under Secy.

आदेश

नई दिल्ली, 15 अप्रैल, 2002

स्टाम्प

का.आ. 1367.—भारतीय स्टाम्प अधिनियम, 1899 (1899 का 2) की धारा 9 की उपधारा (1) के खंड (ख) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्वारा पाँवर फाइनेंस कारपोरेशन लि., नई दिल्ली को मात्र पांच करोड़ इक्यासी लाख वार्डस हजार सात सौ पचास रुपये का समेकित स्टाम्प शुल्क अदा करने की अनुमति प्रदान करती है जो उक्त निगम द्वारा जारी किए जाने वाले मात्र सात सौ चौहत्तर करोड़ सतानवे लाख रुपये के समग्र मूल्य के ऋण पत्रों के स्वरूप में एक लाख रुपये प्रत्येक के 00000001 से 00077497 तक की विशिष्ट संख्या वाले 9.25% कराधेय असुरक्षित विमोच्य अपरिवर्तनीय बंधपत्रों (2012) XI शृंखला पर स्टाम्प शुल्क के कारण प्रभाय है।

[सं. 23/2002-स्टा./का. सं. 33/31/2002-वि.क.]

आर. जी. छावड़ा, अवर सचिव

ORDER

New Delhi, the 15th April, 2002

STAMPS

S.O. 1367.—In exercise of the powers conferred by clause (b) of sub-section (1) of section 9 of the Indian Stamp Act, 1899 (2 of 1899), the Central Government hereby permits Power Finance Corporation Ltd New Delhi to pay consolidated stamp duty of rupees five crore eighty one lakh twenty two thousand seven hundred fifty only on 9.25 per cent Taxable Unsecured Redeemable Non-Convertible Bonds (2012)-XI Ser

bearing distinctive numbers from 00000001 to 00077497 of rupees one lakh each in the nature of Debentures aggregating to rupees seven hundred seventy four crore ninety seven lakh only, to be issued by the said Corporation.

[No. 23/2002-STAMPS-F. No. 33/31/2002 ST]

R. G. CHHAERA, Under Secy.

केन्द्रीय प्रत्यक्ष कर बोर्ड

नई दिल्ली, 10 अप्रैल, 2002

(आयकर)

का. आ. 1368.—आयकर अधिनियम, 1961 (1961 का 43) की धारा 10 के खंड (23) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्रीय सरकार एतद्-द्वारा “दि क्रिकेट एसोसिएशन आफ बंगाल, कोलकाता” को 2001-02 से 2002-03 तक के कर निर्धारण वर्षों के लिए निम्नलिखित शर्तों के अधीन रहते हुए उक्त खंड के प्रयोजनार्थ अधिसूचित करती है, अर्थात् :—

- (1) कर-निर्धारिती उसकी आय का इस्तेमाल अथवा उसकी आय का इस्तेमाल करने के लिए उसका संचयन इस प्रकार के संचयन हेतु उक्त खंड (23) द्वारा यथा संशोधित धारा 11 की उपधारा (2) और (3) के उपबंधों के अनुरूप पूर्णतया तथा अनन्ययता उन उद्देश्यों के लिए करेगा जिनके लिए इसकी स्थापना की गई है;
- (2) कर निर्धारिती उपर्युक्त कर निर्धारण वर्षों से संगत पूर्ववर्ती वर्षों की किसी भी अवधि के दौरान धारा 11 की उपधारा (5) में विनिर्दिष्ट किसी एक अथवा एक से अधिक ढंग अथवा तरीकों से भिन्न तरीकों से उसकी निधि (जेवर-जवाहिरात, फर्नीचर अथवा किसी अन्य वस्तु, जिसे उपर्युक्त खंड (23) के तीसरे परन्तुक के अधीन बोर्ड द्वारा अधिसूचित किया जाए, के रूप में प्राप्त तथा अनुरक्षित स्वैच्छिक अंशदान से भिन्न) का निवेश नहीं करेगा अथवा उसे जमा नहीं करवा सकेगा;
- (3) कर निर्धारिती इसके सदस्यों को किसी भी तरीके से इसकी आय के किसी भाग का संवितरण इससे सम्बद्ध किसी एसोसिएशन अथवा संस्था को अनुदान के अलावा नहीं करेगा; और
- (4) यह अधिसूचना किसी ऐसी आय के संबंध में लागू नहीं होगी, जो कि कारोबार से प्राप्त लाभ तथा अभिलाभ हो जब तक कि ऐसा कारोबार उक्त कर निर्धारिती के उद्देश्यों की प्राप्ति के लिए प्रासंगिक नहीं हो तथा ऐसे कारोबार के

संबंध में अलग से लेखा पुस्तिकाएं नहीं रखी जाती हों।

[अधिसूचना सं. 80/2002/फा सं. 196/4/2002
आयकर नि.-1]

आई. पी. एस. बिन्द्रा, अवर सचिव

CENTRAL BOARD OF DIRECT TAXES

New Delhi, the 10th April, 2002

(INCOME TAX)

S.O. 1368.—In exercise of the powers conferred by clause (23) of section 10 of the Income Tax Act, 1961 (43 of 1961), the Central Government hereby notifies the “The Cricket Association of Bengal, Kolkata” for the purpose of the said clause for the assessment years 2001-02 and 2002-2003 subject to the following conditions namely :—

- (i) the assessee will apply its income, or accumulate it for application, in consonance with the provisions of sub-section (2) and (3) of Section 11 as modified by the said clause (23) for such accumulation wholly and exclusively to the objects for which it is established;
- (ii) the assessee will not invest or deposit its funds (other than voluntary contributions received and maintained in the form of jewellery, furniture or any other article as may be notified by the Board under the third provision to the aforesaid clause (23) for any period during the previous years relevant to the assessment years mentioned above otherwise than in any one or more of the forms or modes specified in sub-section (5) of Section 11;
- (iii) the assessee will not distribute any part of its income in any manner to its members except as grants to any association or institution affiliated to it; and
- (iv) this notification will not apply in relation to any income, being profits and gains of business, unless the business is incidental to the attainments of the objectives of the assessee and separate books of accounts are maintained in respect of such business.

[Notification No. 80/2002/F. No. 196/4/2002-ITA-I]

I. P. S. BINDRA, Under Secy.

नई दिल्ली, 10 अप्रैल, 2002

(आयकर)

का. आ. 1369:—सामान्य जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार अधोलिखित संगठन को उनके नाम के सामने उल्लिखित अर्वाध, के लिए आयकर नियमावली, 1962 के नियम 6 के साथ पठित आयकर अधिनियम, 1961 की धारा 35 की उपधारा (i) के खंड (ii) के प्रयोजनार्थ संस्थान श्रेणी के अन्तर्गत निम्नलिखित शर्तों के अधीन अनुमोदित करती है:—

- (1) अधिसूचित संस्थान अपने अनुसंधान कार्यकलापों के लिए अलग लेखा बहियों का रख-रखाव करेगा;
- (2) अधिसूचित संस्थान प्रत्येक वित्तीय वर्ष के लिए अपनी वैज्ञानिक अनुसंधान गतिविधियों की वार्षिक रिटर्न प्रत्येक 31 मई को अथवा उससे पहले सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग "टेक्नोलॉजी भवन" न्यू मेहरोली रोड, नई दिल्ली—110016 को प्रस्तुत करेगा;
- (3) अधिसूचित संस्थान केन्द्र सरकार की तरफ से नामोदित निर्धारण अधिकारी को आयकर की विवरणी प्रस्तुत करने के अतिरिक्त अपने लेखा परीक्षित वार्षिक लेखों की एक प्रति तथा अपने अनुसंधान कार्यकलापों जिसके लिए आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के अन्तर्गत छूट प्रदान की गई थी, के संबंध में आय एवं व्यय खाते की लेखा परीक्षा की भी एक प्रति संस्था पर अधिकार क्षेत्र वाले (क) आयकर महानिदेशक (छूट) 10 मिडिलटन रां, पांचवां तल, कलकत्ता—700071 (ख) सचिव, वैज्ञानिक एवं औद्योगिक अनुसंधान विभाग तथा (ग) आयकर आयुक्त/आयकर निदेशक (छूट) को प्रत्येक वर्ष 31 अक्टूबर को अथवा उससे पहले प्रस्तुत करेगा।

में और पहले ही अधिकार क्षेत्र वाले आयकर आयुक्त/आयकर निदेशक (छूट) के माध्यम से केन्द्र सरकार को आवेदन करें। अनुमोदन के नवीकरण के लिए आवेदन पत्र की तीन प्रतियां सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग को सीधे भेजी जाएंगी।

[अधिसूचना सं. 78/2002/फा. सं. 203/33/2002—
आयकर नि.-II]

संगीता गुप्ता, निदेशक (आयकर नि.-II)

New Delhi, the 10th April, 2002

(INCOME TAX)

S.O. 1369.—It is hereby notified for general information that the organisation mentioned below has been approved by the Central Government for the period mentioned against its name, for the purpose of clause (ii) of sub-section (1) of section 35 of the Income tax Act, 1961, read with Rule 6 of the Income tax Rules, 1962 under the category "Institution" subject to the following conditions:—

- (i) The notified Institution shall maintain separate books of accounts for its research activities;
- (ii) The notified Institution shall furnish the Annual Return of its scientific research activities to the Secretary, Department of Scientific & Industrial Research, 'Technology Bhawan', New Mehrauli Road, New Delhi-110016 for every financial year on or before 31st May of each year.
- (iii) The notified Institution shall submit, on behalf of the Central Government, to (a) the Director General of Income tax (Exemptions), 10 Middleton Row, 5th Floor, Kolkata-700071 (b) the Secretary, Department of Scientific & Industrial Research, and (c) the Commissioner of Income tax/Director of Income tax (Exemptions), having jurisdiction over the organisation, on or before the 31st October each year, a copy of its audited Annual Accounts and also a copy of audited Income & Expenditure Account in respect of its research activities for which exemption was granted under sub-section (1) of section 35 of Income tax Act, 1961 in addition to the return of income tax to the designated assessing officer.

क्रम सं.	अनुमोदित संगठन का नाम	अर्वाध जिसके लिए अधिसूचना प्रभावी है
1.	मैसर्स हैदराबाद आई रिसर्च फाउंडेशन, एल वी प्रसाद मार्ग, बंजारा हिल्स, हैदराबाद—500034	1-4-2001 में 31-3-2004

टिप्पणी:—अधिसूचित संस्थान को मजहूर दी जाती है कि वे अनुमोदन के नवीकरण के लिए तीन प्रतियां

S. No. Name of the organisation
approved

1. M/s. Hyderabad Eye Research
Foundation, L.V. Prasad Marg,
Banjara Hills, Hyderabad-500034.

Period for which
Notification is effective

1-4-2001 to 31-3-2004.

Notes : The notified Institution is advised to apply in triplicates and well in advance for renewal of the approval, to the Central Government through the Commissioner of Income tax/Director of Income tax (Exemptions) having jurisdiction. Three copies of application for renewal of approval shall be sent directly to the Secretary, Department of Scientific and Industrial Research,

[Notification No. 78/2002/F. No. 203/33/2002-
ITA-II]

SANGEETA GUPTA, Director (ITA-II)

नई दिल्ली, 10 अप्रैल, 2002

(आयकर)

का.आ. 1370.—सामान्य जानकारी के लिए यह अधिसूचित किया जाता है कि केन्द्र सरकार अधोलिखित संगठन को उनके नाम के सामने उल्लिखित अवधि के लिए आयकर नियमावली, 1962 के नियम 6 के साथ पठित आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के खंड (2) के प्रयोजनार्थ संघ श्रेणी के अन्तर्गत निम्नलिखित शर्तों के अधीन अनुमोदित करती है:—

- (1) अधिसूचित संघ अपने अनुसंधान कार्यकलापों के लिए अलग लेखा बहियों का रख-रखाव करेगा ;
- (2) अधिसूचित संघ प्रत्येक वित्तीय वर्ष के लिए अपनी वैज्ञानिक अनुसंधान गतिविधियों की वार्षिक रिपोर्ट प्रत्येक 31 मई को अथवा उससे पहले सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग "टेक्नोलॉजी भवन" न्यू मेहरोली रोड, नई दिल्ली-110016 को प्रस्तुत करेगा ;
- (3) अधिसूचित संघ केन्द्र सरकार की तरफ से नामो-दिष्ट निर्धारण अधिकारी को आयकर की विवरणी प्रस्तुत करने के अतिरिक्त अपने लेखा परीक्षित वार्षिक लेखों की एक प्रति तथा अपने अनुसंधान कार्यकलापों जिसके लिए आयकर अधिनियम, 1961 की धारा 35 की उपधारा (1) के अन्तर्गत छूट प्रदान की गई थी, के संबंध में आय एवं व्यय खाने की लेखा परीक्षा की भी

एक प्रति संस्था पर अधिकार क्षेत्र वाले (क) आयकर महानिदेशक (छूट) 10 मिडिलटन रॉ, पांचवां तल, कलकत्ता-700071 (ख) सचिव, वैज्ञानिक एवं औद्योगिक अनुसंधान विभाग तथा (ग) आयकर आयुक्त/आयकर निदेशक (छूट) को प्रत्येक वर्ष 31 अक्टूबर को अथवा उससे पहले प्रस्तुत करेगा ।

क्रम सं. अनुमोदित संगठन का नाम

अवधि जिसके
लिए अधिसूचना
प्रभावी है

- | | |
|--|--------------------------|
| 1. मसर्स सेरम इंस्टिट्यूट आफ इंडिया रिसर्च फाउंडेशन, सरोज भवन, 16-बी/1, डा. अम्बेडकर रोड पुणे-411001 | 1-4-2001 से
31-3-2004 |
|--|--------------------------|

टिप्पणी अधिसूचित संघ की सलाह दी जाती है कि वे अनुमोदन के नवीकरण के लिए तीन प्रतियों में और पहले ही अधिकार क्षेत्र वाले आयकर आयुक्त/आयकर निदेशक (छूट) के माध्यम से केन्द्र सरकार को आवेदन करें । अनुमोदन के नवीकरण के लिए आवेदन पत्र की तीन प्रतियां सचिव, वैज्ञानिक और औद्योगिक अनुसंधान विभाग को सीधे भेजी जाएंगी ।

[अधिसूचना सं. 79/2002/फा.सं. 203/22/2002-
आयकर नि.-II]

संगीता गुप्ता, निदेशक (आयकर नि.-II)

New Delhi, the 10th April, 2002

(INCOME TAX)

S.O. 1370.—It is hereby notified for general information that the organisation mentioned below has been approved by the Central Government for the period mentioned against the name, for the purpose of clause (ii) of Sub-section (1) of section 35 of the Income tax Act, 1961, read with Rule 6 of the Income tax Rules, 1962 under the category "Association" subject to the following conditions :—

- (i) The notified Association shall maintain separate books of accounts for its research activities;
- (ii) The notified Association shall furnish the Annual Return of its scientific research activities to the Secretary, Department of Scientific & Industrial Research, 'Technology Bhawan', New Mehrauli Road, New Delhi-110016 for every financial year on or before 31st May of each year;

(iii) The notified Association shall submit, on behalf of the Central Government, to (a) the Director General of Income tax (Exemptions), 10 Middleton Row, 5th Floor, Kolkata-700071 (b) the Secretary, Department of Scientific & Industrial Research, and (c) the Commissioner of Income tax|Director of Income tax (Exemptions), having jurisdiction over the organisation, on or before the 31st October each year, a copy of its audited Annual Accounts and also a copy of audited Income & Expenditure Account in respect of its research activities for which exemption was granted under Sub-section (1) of section 35 of Income tax Act, 1961 in addition to the return of income tax to the designated assessing officer.

S. No. Name of the organisation approved.

1. M/s. Serum Institute of India
Research Foundation, Sarosh Bhawan,
16-B|1, Ambedkar Road,
Pune-411001.

Period for which
Notification is effective

1-4-2001 to 31-3-2004.

Notes : The notified Association is advised to apply in triplicates and well in advance for renewal of the approval, to the Central Government through the Commissioner of Income tax|Director of Income tax (Exemptions) having jurisdiction. Three copies of application for renewal of approval shall also be sent directly to the Secretary, Department of Scientific and Industrial Research.

[Notification No. 79|2002|F. No. 203|22|2002-ITA-II]

SANGEETA GUPTA, Director (ITA-II)

(केन्द्रीय उत्पाद शुल्क आयुक्त का कार्यालय)

मद्रास, 12 अप्रैल, 2002

स 2/2002-सीमा शुल्क (एन.टी.)

का.आ. 1371:-सीमा शुल्क अधिनियम, 1962 (1962 का 52) की धारा 9 जो भारत सरकार, वित्त मंत्रालय, राज्य विभाग,

नई दिल्ली के अधिसूचना सं. 33/94-सीमा शुल्क (एनटी) दिनांक 1-7-94 के साथ पठित, द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए मै एतद्वारा तमिलनाडु राज्य के, दिण्डुक्कल जिला, निलक्कोट्टे, तालुका के निलक्कोट्टे, गांव को सीमा शुल्क अधिनियम, 1962 (1962 का 52) के अधीन शत प्रतिशत निर्यातोन्मुख उपक्रम स्थापित करने हेतु भांडागार घोषित करता है।

[फाइल सी.सं. IV/16/35/2002-टी-2]

अरुण खड्तरे, आयुक्त

(Office of the Commissioner of Central Excise)

Madurai, the 12th April, 2002

No. 2|2002-Customs (N.T.)

S.O. 1371.—In exercise of the powers conferred on me under section 9 of the Customs Act, 1962 (52 of 1962) read with Notification No. 33|94-Customs (N.T.) dated 1-7-94 of the Government of India, Ministry of Finance, Department of Revenue, New Delhi, I hereby declare Nilakottai Village, Nilakottai Taluk, Dindigul District in the State of Tamil Nadu to be a warehousing station under the Customs Act, 1962 (52 of 1962) for the purpose of setting up of 100% Export Oriented Undertakings.

[File C. No. IV|16|35|2002-T.2]

A. D. KHADTARE, Commissioner

वाणिज्य और उद्योग मंत्रालय

(वाणिज्य विभाग)

नई दिल्ली, 11 अप्रैल, 2002

का. आ. 1372.—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) नियम, 1964 के नियम 12 के उपनियम (2) के साथ पठित निर्यात (क्वालिटी

नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, सुपरिटेण्डेंस कंपनी ऑफ इंडिया प्राइवेट लिमिटेड को, जो 396, गौतम नगर, ओल्ड ई. एस. आई. बिल्डिंग, भुवनेश्वर में अवस्थित है और वही उसका रजिस्ट्रीकृत कार्यालय है, वाणिज्य मंत्रालय की अधिसूचना सं. का. आ. 3975, तारीख 20 दिसम्बर, 1965 के साथ उपाबद्ध अनुसूची में विनिर्दिष्ट खनिजों और अयस्कों, समूह 1 के, अर्थात् मैंगनीज डाईऑक्साइड को छोड़कर लौह अयस्क और मैंगनीज अयस्क के निर्यात में पूर्व निरीक्षण के लिए एक अभिकरण के रूप में, इस अधिसूचना के प्रकाशन की तारीख से 31-12-2002 तक के लिए निम्नलिखित शर्तों के अधीन रहते हुए मान्यता देती है, अर्थात् :—

(1) सुपरिटेण्डेंस कंपनी ऑफ इंडिया (प्राइवेट) लिमिटेड, निर्यात निरीक्षण परिषद् द्वारा इस निमित्त नामनिर्दिष्ट अधिकारियों को, खनिज और अयस्क समूह 1 निर्यात (निरीक्षण) नियम, 1965 के नियम 4 के अधीन निरीक्षण का प्रमाणपत्र अर्पण करने में उनके द्वारा अनुसरित की जाने वाली निरीक्षण प्रणालि की जांच करने के लिए, पर्याप्त सुविधाएं देंगी ;

(2) सुपरिटेण्डेंस कंपनी ऑफ इंडिया (प्राइवेट) लिमिटेड इस अधिसूचना के अधीन अपने कृत्यों के निर्वहन में, ऐसे निदेशों से आवद्ध होगी जो निदेशक, निरीक्षण और क्वालिटी नियंत्रण समय-समय पर, लिखन रूप में दें।

[फा. सं. 5/5/2002-ई. आई एण्ड ई. पी.]

राज सिंह, उप सचिव

MINISTRY OF COMMERCE AND INDUSTRY

(Department of Commerce)

New Delhi, the 11th April, 2002

S.O. 1372.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), read with sub-rule (2) of rule 12 of the Export (Quality Control and Inspection) Rules, 1964 the Central Government hereby recognises, upto 1222 GI/2002—2.

31-12-2002, from the date of publication of this notification, Superintendence Company of India (Private) Limited, located and having their registered office at 396, Gautam Nagar, Old ESI Building, Bhubaneswar, as an Agency for the inspection of Minerals and Ores Group I, namely iron ore and manganese ore excluding manganese dioxide, specified in the Schedule annexed to the Ministry of Commerce number S.O. 3975, dated the 20th December, 1965, prior to export, subject to the following conditions, namely :—

(i) that Superintendence Company of India (Private) Limited shall give adequate facilities to the officers nominated by the Export Inspection Council in this behalf to examine the method of inspection followed by them in granting the certificate of inspection under rule 4 of the Export of Minerals and Ores-Group I (Inspection) Rules, 1965 ;

(ii) that Superintendence Company of India (Private) Limited, in the performance of their functions under this notification, shall be bound by such directions as the Director Inspection and Quality Control may give in writing from time to time.

[F. No. 5/5/2002-EI&EP]

RAI SINGH, Dy Secy.

नई दिल्ली, 11 अप्रैल, 2002

का.आ. 1363.—केन्द्रीय सरकार, निर्यात (क्वालिटी नियंत्रण और निरीक्षण) अधिनियम, 1963 (1963 का 22) की धारा 7 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत के राजपत्र भाग 2, खंड 3, उप-खंड (ii) में प्रकाशित भारत सरकार के वाणिज्य और उद्योग मंत्रालय, वाणिज्य की अधिसूचना सं. का. आ. 2700, तारीख 28 सितम्बर, 2001 को तत्काल प्रभाव से विखंडित करती है।

[फा. सं. 5/12/2001-ई आई और ईपी]

राज सिंह, उप सचिव

New Delhi, the 11th April, 2002

S.O. 1373.—In exercise of the powers conferred by sub-section (1) of section 7 of the Export (Quality Control and Inspection) Act, 1963 (22 of 1963), the Central Government hereby rescinds the notification of the Government of India in the Ministry of Commerce and Industry, Department of Commerce number S.O. 2700 dated 28th September, 2001, published in the Gazette of India, Part II, section 3, sub-section (ii) with immediate effect.

[F. No. 5/12/2001-EI&EP]

RAJ SINGH, Dy. Secy.

वस्त्र मंत्रालय

नई दिल्ली, 11 अप्रैल, 2002

का.आ. 1374:—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के प्रयोग के लिए) नियम, 1976 के नियम 10 के उपनियम 4 के अनुसरण में, वस्त्र मंत्रालय के अंतर्गत आने वाले निम्नलिखित कार्यालय को, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:

निदेशक (उ.पू.),

मूंगा बीज विकास परियोजना,

केन्द्रीय रेशम बोर्ड,

आर.जी. वल्लभ रोड, पो.ओ. दिमपुर

गुवाहाटी-781005 (असम)

[सं. ई-11016/1/99-हिन्दी]

चन्द्र भान, उप सचिव

MINISTRY OF TEXTILES

New Delhi, the 11th April, 2002

S.O. 1374.—In pursuance of Sub-Rule 4 of Rule 10 of the Official Language (Use for official purposes of the Union) Rules 1976 the Central Government hereby notifies the following office under the Ministry of Textiles whereof more than 80 per cent staff have required working knowledge of Hindi.

Director (N.E.),

Muga Seed Development Project,

Central Silk Board,

R. G. Barua Road, P.O. Dispur

Guwahati-781005 (Assam).

[No. E-11016/1/99-Hindi]

CHANDER BHAN, Dy. Secy.

रसायन और उर्वरक मंत्रालय

(रसायन और पेट्रो रसायन विभाग)

नई दिल्ली, 16 अप्रैल, 2002

का.आ. 1375.—केन्द्रीय सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप-नियम (4) के अनुसरण में रसायन और उर्वरक मंत्रालय (रसायन और पेट्रो रसायन विभाग के नियंत्रणाधीन "ख" क्षेत्र में स्थित निम्नलिखित सार्वजनिक क्षेत्रीय उपक्रम को, जिसके 80 प्रतिशत कर्मचारीवृन्द ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है:

हिन्दुस्तान एंटीबायोटिक्स लिमिटेड

पिम्परी, पुणे-411 018 (महाराष्ट्र)

[संख्या ई-11012/1/2002-हिन्दी]

प्रवीण कुमार नेजयान, निदेशक

MINISTRY OF CHEMICALS AND FERTILIZERS

(Department of Chemicals and Petrochemicals)

New Delhi, the 16th April, 2002

S.O. 1375.—In pursuance of Sub-rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notify the following public sector undertaking located in region 'B' under the administrative control of Ministry of Chemicals and Fertilizers, Department of Chemicals and Petrochemicals, the 80% staff whereof have acquired the working knowledge of Hindi :—

Hindustan Antibiotics Limited

Pimpri, Pune-411018 (Maharashtra).

[No. E-11012/1/2002-Hindi]

P. K. TEJYAN, Director

संचार और सूचना प्रौद्योगिकी मंत्रालय
डाक विभाग

नई दिल्ली, 15 अप्रैल, 2002

क्र. आ. 1376.—राजभाषा नियम, (संघ के शासकीय प्रयोजनों के लिए प्रयोग), 1976 के नियम-10 के उप नियम (4) के अनुसरण में केन्द्र सरकार, डाक विभाग के निम्नलिखित अधीनस्थ कार्यालयों को, जिनके 80 प्रतिशत कर्मचारियों (ग्रुप "घ" कर्मचारियों को छोड़कर) ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, अधिसूचित करती है :

1.	अम्बाला मुख्य डाकघर-133001	24.	बोह उप डाकघर
2.	अम्बाला एलेग्जेंडर रोड उप डाकघर	25.	बुड़िया उप डाकघर
3.	अम्बाला ए.के. लाईन उप डाकघर	26.	छछरौली उप डाकघर
4.	अम्बाला कमीशनर कोर्ट उप डाकघर	27.	धीन उप डाकघर
5.	गोबिन्द नगर अम्बाला उप डाकघर	28.	जगाधरी उप डाकघर
6.	हरगोलाल अम्बाला उप डाकघर	29.	जगाधरी वर्कशाप उप डाकघर
7.	आई.ए.एफ.लाइन अम्बाला उप डाकघर	30.	जगाधरी टाउन उप डाकघर
8.	अम्बाला कच्चा बाजार उप डाकघर	31.	जगाधरी कोर्ट उप डाकघर
9.	खड़गा कैट कैन्टीन अम्बाला उप डाकघर	32.	कलावड उप डाकघर
10.	कुलदीप नगर अम्बाला उप डाकघर	33.	कैसरी उप डाकघर
11.	इन्डस्ट्रीयल एस्टेट अम्बाला उप डाकघर	34.	खारवान उप डाकघर
12.	महेश नगर अम्बाला उप डाकघर	35.	खिजराबाद ईस्ट उप डाकघर
13.	पी. एंड टी कालोनी अम्बाला उप डाकघर	36.	मुलाना उप डाकघर
14.	पंजाबी मोहल्ला अम्बाला उप डाकघर	37.	मुस्तफाबाद उप डाकघर
15.	सदर बाजार अम्बाला उप डाकघर	38.	रादौर उप डाकघर
16.	तोप खाना बाजार अम्बाला उप डाकघर	39.	सादौरा उप डाकघर
17.	रेल बिहार अम्बाला उप डाकघर	40.	साहा उप डाकघर
18.	अधौया उप डाकघर	41.	सरावां उप डाकघर
19.	बब्याल उप डाकघर	42.	यमुना नगर उप डाकघर
20.	बुध कलां उप डाकघर	43.	आटो इन्डस्ट्री यमुना नगर उप डाकघर
21.	बराड़ा उप डाकघर	44.	माडल टाऊन यमुना नगर उप डाकघर
22.	बिहटा उप डाकघर	45.	शुगर मिल यमुना नगर उप डाकघर
23.	बिलासपुर उप डाकघर	46.	रेलवे रोड यमुना नगर उप डाकघर
		47.	रामपुरा कालोनी यमुना नगर उप डाकघर
		48.	माटिया नगर यमुना नगर उप डाकघर
		49.	मुधत कालोनी यमुना नगर उप डाकघर

50.	वर्कशॉप रोड यमुना नगर उप डाकघर
51.	अम्बाला शहर मुख्य डाकघर
52.	अम्बाला शहर आदर्श नगर उप डाकघर
53.	अम्बाला शहर बाजार बस्ती राम उप डाकघर
54.	अम्बाला शहर डी.ए.वी. कालिज उप डाकघर
55.	अम्बाला शहर सिविल लाइन उप डाकघर
56.	अम्बाला शहर कचहरी उप डाकघर
57.	अम्बाला शहर प्रेम नगर उप डाकघर
58.	अम्बाला शहर प्रीत नगर उप डाकघर
59.	अम्बाला शहर पटेल नगर उप डाकघर
60.	अम्बाला शहर मॉडल टाउन उप डाकघर
61.	अम्बाला शहर रेलवे रोड उप डाकघर
62.	अम्बाला शहर सब्जी मण्डी उप डाकघर
63.	अम्बाला शहर सेशन कोर्ट उप डाकघर
64.	बलदेव नगर अम्बाला शहर उप डाकघर
65.	अम्बाला शहर मोटर स्टैण्ड उप डाकघर
66.	अनाज मण्डी अम्बाला शहर उप डाकघर
67.	अम्बाला शहर गीता नगरी उप डाकघर
68.	बी.सी.डब्ल्यू सूरजपुर उप डाकघर
69.	बरवाला उप डाकघर
70.	चण्डी मंदिर उप डाकघर
71.	चण्डी मंदिर कैट उप डाकघर
72.	सी.आर.पी.एफ. पिजौर उप डाकघर
73.	आई.टी.बी.पी. मानू उप डाकघर
74.	जटवाड उप डाकघर
75.	कालका उप डाकघर
76.	मोरनी उप डाकघर
77.	नन्योला (ईडीएसओ) उप डाकघर
78.	कालका आर.एस. उप डाकघर
79.	नरायणगढ़ उप डाकघर
80.	पंचकूला जी के उप डाकघर
81.	पंचकूला सैक्टर-4 उप डाकघर
82.	पंचकूला सैक्टर-15 उप डाकघर
83.	इन्डस्ट्रीयल एस्टेट पंचकुला उप डाकघर

84.	पंचकूला सैक्टर-8 (डिलिवरी) उप डाकघर
85.	पंजोखदा (ईडीएसओ) उप डाकघर
86.	पिजौर उप डाकघर
87.	एच एम टी पिजौर उप डाकघर
88.	रायपुर रानी उप डाकघर
89.	रामगढ़ उप डाकघर
90.	शहजादपुर उप डाकघर
91.	कुरुक्षेत्र मुख्य डाकघर
92.	अमीन उप डाकघर
93.	बाबेन उप डाकघर
94.	चीका उप डाकघर
95.	डांड उप डाकघर
96.	फतेहपुर उप डाकघर
97.	गुहला उप डाकघर
98.	गुमथला गारु उप डाकघर
99.	झांसा उप डाकघर
100.	ईस्माईलाबाद उप डाकघर
101.	कैथल मंडी उप डाकघर
102.	कैथल सिटी उप डाकघर
103.	करनाल रोड कैथल उप डाकघर
104.	सिवान गेट कैथल उप डाकघर
105.	जींद रोड कैथल उप डाकघर
106.	कौल उप डाकघर
107.	कलायत उप डाकघर
108.	कुरुक्षेत्र बिरला मंडी उप डाकघर
109.	कुरुक्षेत्र जुडीशियल काम्पलेक्स उप डाकघर
110.	कुरुक्षेत्र मोहन नगर उप डाकघर
111.	कुरुक्षेत्र थानेसर टाऊन उप डाकघर
112.	कुरुक्षेत्र इजीनियर कालेज उप डाकघर
113.	कुरुक्षेत्र यूनिवर्सिटी उप डाकघर
114.	लाडवा उप डाकघर
115.	लाडवा न्यू ग्रैन मार्किट उप डाकघर
116.	पाई उप डाकघर
117.	पैहवा उप डाकघर
118.	पैहवा सरस्वती मंदिर उप डाकघर
119.	पिपली उप डाकघर
120.	पुण्डरी उप डाकघर
121.	राजोद उप डाकघर
122.	शाहबाद मारकण्डा उप डाकघर
123.	शाहबाद ग्रैन मार्किट उप डाकघर
124.	सिवान उप डाकघर
125.	ढोल उप डाकघर
126.	करनाल मुख्य डाकघर

127.	असंध उप डाकघर
128.	बल्लाह उप डाकघर
129.	घरौडा उप डाकघर
130.	गद्दी बीरबल उप डाकघर
131.	इन्द्री टाऊन उप डाकघर
132.	इन्द्री उप डाकघर
133.	जूडला उप डाकघर
134.	करनाल सिटी उप डाकघर
135.	करनाल जनरल बस स्टैण्ड उप डाकघर
136.	करनाल हाऊसिंग बोर्ड कालोनी उप डाकघर
137.	करनाल इन्डस्ट्रियल एरिया उप डाकघर
138.	करनाल कचहरी उप डाकघर
139.	करनाल माडल टाऊन उप डाकघर
140.	करनाल नई मण्डी उप डाकघर
141.	करनाल एन.डी.आर.आई. उप डाकघर
142.	करनाल प्रताप पुरा उप डाकघर
143.	करनाल राम नगर उप डाकघर
144.	करनाल रेलवे रोड उप डाकघर
145.	करनाल सदर बाजार उप डाकघर
146.	करनाल सैक्टर-6 उप डाकघर
147.	कुंजपुरा उप डाकघर
148.	कुंजपुरा सैनिक स्कूल उप डाकघर
149.	मधुबन उप डाकघर
150.	मधुबन पी.टी.सी. उप डाकघर
151.	नीलों खेडी उप डाकघर
152.	नीलों खेडी जी.आई.पी. उप डाकघर
153.	निसिंग उप डाकघर
154.	सालवान उप डाकघर
155.	तरावडी उप डाकघर
156.	तरावडी मंडी उप डाकघर
157.	पानीपत मुख्य डाकघर
158.	अट्टा उप डाकघर
159.	हथवाड़ा उप डाकघर
160.	इसराना उप डाकघर
161.	मडलौडा उप डाकघर
162.	नौलथा उप डाकघर
163.	पानीपत ब्यास प्रोजेक्ट उप डाकघर
164.	पानीपत जी.टी.रोड उप डाकघर
165.	पानीपत सिटी उप डाकघर
166.	पानीपत खादी आश्रम उप डाकघर
167.	पानीपत क्रांति नगर उप डाकघर
168.	पानीपत कृष्ण पुरा उप डाकघर

169.	पानीपत माडल टाऊन उप डाकघर
170.	पानीपत मण्डी उप डाकघर
171.	पानीपत एन.एफ.एल. उप डाकघर
172.	पानीपत न्यू सब्जी मंडी उप डाकघर
173.	पानीपत पटेल नगर उप डाकघर
174.	पानीपत शुगर मिल उप डाकघर
175.	पानीपत थरमल प्रोजेक्ट उप डाकघर
176.	पानीपत रिफायनरी उप डाकघर
177.	पट्टी कल्याणा उप डाकघर
178.	समालखा उप डाकघर
179.	जीन्द मुख्य डाकघर
180.	अलेवा उप डाकघर
181.	डनोडा कला उप डाकघर
182.	धतरथ उप डाकघर
183.	जीन्द पालिका बाजार उप डाकघर
184.	जीन्द मिनी सेंट्रिफ्रेट उप डाकघर
185.	जीन्द पटियाला चौक उप डाकघर
186.	जीन्द पंजाबी बाजार उप डाकघर
187.	जीन्द रेलवे स्टेशन उप डाकघर
188.	जीन्द रोड रहतक उप डाकघर
189.	जुलाना उप डाकघर
190.	नरवाना उप डाकघर
191.	नरवाना शहर उप डाकघर
192.	पिलू खेडा उप डाकघर
193.	सफीदों उप डाकघर
194.	सफीदों सिटी उप डाकघर
195.	शामली कला उप डाकघर
196.	उचाना उप डाकघर
197.	एटलस साइकिल सोनीपत उप डाकघर
198.	बहल गढ़ उप डाकघर
199.	बरोडा उप डाकघर
200.	भटगोन उप डाकघर
201.	भैरावाल कला उप डाकघर
202.	भीमनगर सोनीपत उप डाकघर
203.	बिपचारी उप डाकघर
204.	बुलाना उप डाकघर
205.	बस स्टैण्ड गोहाना उप डाकघर
206.	इंजीनियर कालेज मुरथल उप डाकघर
207.	फरमाना उप डाकघर
208.	गज बाजार सोनीपत उप डाकघर
209.	गन्नौर उप डाकघर
210.	गन्नौर सिटी उप डाकघर
211.	गोहाना उप डाकघर
212.	गोहाना मंडी उप डाकघर
213.	गोहाना रोड सोनीपत उप डाकघर

214.	हाऊसिंग बोर्ड कालोनी सोनीपत उप डाकघर
215.	इन्डस्ट्रियल एस्टेट कुंडली उप डाकघर
216.	जाखोली उप डाकघर
217.	जौन उप डाकघर
218.	कन्या गुरुकुल खानपुर उप डाकघर
219.	खरखोदा उप डाकघर
220.	माडल टाऊन सोनीपत उप डाकघर
221.	मुखल उप डाकघर
222.	मुण्डलवा उप डाकघर
223.	नाहरी उप डाकघर
224.	पी.एस. राई उप डाकघर
225.	पुरखारु उप डाकघर
226.	राम बाजार सोनीपत उप डाकघर
227.	रोहाट उप डाकघर
228.	सेक्टर-14 सोनीपत उप डाकघर
229.	सिसाना उप डाकघर
230.	सोनीपत कचहरी उप डाकघर
231.	सोनीपत मंडी उप डाकघर
232.	एस.एस. पार्क सोनीपत उप डाकघर
233.	बहादुरगढ़ मुख्य डाकघर
234.	असौधा उप डाकघर
235.	बादली उप डाकघर
236.	बहादुरगढ़ मंडी उप डाकघर
237.	छारा उप डाकघर
238.	हसनगढ़ उप डाकघर
239.	इन्डस्ट्रियल एरिया बहादुरगढ़ उप डाकघर
240.	नेन बाजार बहादुरगढ़ उप डाकघर
241.	मौडसी उप डाकघर उप डाकघर
242.	सापला उप डाकघर उप डाकघर
243.	मिवानी मुख्य डाकघर
244.	अचीना उप डाकघर
245.	मौड उप डाकघर
246.	बाधरा उप डाकघर उप डाकघर
247.	बिरही कलां उप डाकघर
248.	बारवा उप डाकघर उप डाकघर
249.	मवानी खेड़ा उप डाकघर
250.	बिरला कालोनी मिवानी उप डाकघर
251.	बेहल उप डाकघर
252.	बस स्टैंड मिवानी उप डाकघर
253.	बी.एस.ई.एच. मिवानी उप डाकघर
254.	धिरिया उप डाकघर
255.	झंग उप डाकघर
256.	चरखी दादरी उप डाकघर

257.	चरखी दादरी फैक्ट्री उप डाकघर
258.	चरखी दादरी सिटी उप डाकघर
259.	होलू बाजार मिवानी उप डाकघर
260.	जैन चौक मिवानी उप डाकघर
261.	जमाल पुर उप डाकघर
262.	जुई खुर्द उप डाकघर
263.	झोझ कलां उप डाकघर
264.	जोलां हास्पिटल मिवानी उप डाकघर
265.	केरु उप डाकघर
266.	लोहारु बाजार मिवानी उप डाकघर
267.	मनहेरु उप डाकघर उप डाकघर
268.	मिनी सैक्ट्रिएट मिवानी उप डाकघर
269.	मुधल खुर्द उप डाकघर
270.	रोधान उप डाकघर
271.	रानीला ई डी उप डाकघर
272.	सिवानी मंडी उप डाकघर
273.	सनावर उप डाकघर
274.	तोशाम उप डाकघर
275.	टिरगराना उप डाकघर
276.	जे सी चरखी दादरी उप डाकघर
277.	खारे कला उप डाकघर
278.	फरीदाबाद मुख्य डाकघर
279.	अमर नगर फरीदाबाद उप डाकघर
280.	ओशंगाबाद उप डाकघर
281.	बल्लभगढ़ उप डाकघर
282.	चावला कालोनी बल्लभगढ़ उप डाकघर
283.	कैपिटल बस स्टैंड उप डाकघर फरीदाबाद
284.	एक्सकोर्ट नगर उप डाकघर फरीदाबाद
285.	फैक्ट्री रोड उप डाकघर फरीदाबाद
286.	फैक्ट्री एरिया उप डाकघर फरीदाबाद
287.	फरीदाबाद सिटी उप डाकघर
288.	फिरोजगांधी नगर उप डाकघर फरीदाबाद
289.	ग्रेन मार्केट उप डाकघर पलवल
290.	जी.टी.रोड उप डाकघर फरीदाबाद
291.	हसनपुर उप डाकघर
292.	होडल उप डाकघर
293.	हथिन उप डाकघर
294.	इन्डस्ट्रियल एरिया उप डाकघर फरीदाबाद
295.	जवाहर कालोनी उप डाकघर फरीदाबाद
296.	जवाहर नगर उप डाकघर पलवल

297.	मथुरा रोड उप डाकघर फरीदाबाद
298.	नैबरहुड नम्बर-2 उप डाकघर फरीदाबाद एन एच - II
299.	एन एच- III उप डाकघर फरीदाबाद
300.	एन एच- IV उप डाकघर फरीदाबाद
301.	न्यू टाऊन उप डाकघर पलवल
302.	पलवल उप डाकघर
303.	प्रेस कालोनी उप डाकघर फरीदाबाद
304.	सेक्टर - 7 उप डाकघर फरीदाबाद
305.	सेक्टर 8 उप डाकघर फरीदाबाद
306.	सेक्टर 9 उप डाकघर फरीदाबाद
307.	सेक्टर 15 उप डाकघर फरीदाबाद
308.	सेक्टर 16 उप डाकघर फरीदाबाद
309.	सेक्टर 16 ए उप डाकघर फरीदाबाद
310.	सेक्टर 22 उप डाकघर फरीदाबाद
311.	सेक्टर 18 उप डाकघर फरीदाबाद
312.	टिगरा उप डाकघर
313.	एन आई एफ एफ उप डाकघर फरीदाबाद
314.	सेक्टर-29 उप डाकघर फरीदाबाद
315.	मिनी सैक्ट्रीएट सैक्टर-12 उप डाकघर फरीदाबाद
316.	सूरज कुंड उप डाकघर फरीदाबाद
317.	सैट-3 उप डाकघर बल्लभगढ़
318.	गुडगांव मुख्य डाकघर
319.	डी.एल.एफ. कुतब एन्क्लेव उपडाकघर
320.	नूह उप डाकघर
321.	नरसिंह पुर फैक्ट्री ऐरिया उप डाकघर गुडगांव
322.	सोहना उप डाकघर
323.	फिरोजपुर झिरका उप डाकघर
324.	हेली मण्डी उप डाकघर
325.	खलीलपुर उप डाकघर
326.	खुडासा रोड उप डाकघर
327.	पालम विहार उप डाकघर गुडगांव
328.	पालम रोड उप डाकघर गुडगांव
329.	पाटोदी उप डाकघर
330.	ऐयर फोर्स उप डाकघर गुडगांव
331.	अर्जुन नगर उप डाकघर गुडगांव
332.	बडशाहपुर उप डाकघर
333.	वोहरा कलां उप डाकघर
334.	बसाई रोड उप डाकघर गुडगांव
335.	मोडसी उप डाकघर
336.	फारुख नगर उप डाकघर
337.	गद्दी हरसारु उप डाकघर
338.	गुडगांव कचहरी उप डाकघर

339.	इंडस्ट्रियल कम्प्लेक्स डुडहेड़ा उप डाकघर
340.	इंडस्ट्रियल एस्टेट उप डाकघर गुडगांव
341.	जैकबपुरा उप डाकघर
342.	मिनी सैक्ट्रीएट उप डाकघर
343.	नगीना उप डाकघर
344.	नानू कलां उप डाकघर
345.	न्यू कालोनी गुडगांव उप डाकघर
346.	एन.एस.जी. कैम्प भनंसर उप डाकघर
347.	पुनहाना उप डाकघर
348.	रेलवे रोड उप डाकघर गुडगांव
349.	सेक्टर-17 उप डाकघर गुडगांव
350.	शिवाजी नगर उप डाकघर गुडगांव
351.	सांहना अड्डा उप डाकघर गुडगांव
352.	नारु उप डाकघर
353.	अर्बन ईस्टेट उप डाकघर गुडगांव
354.	सेक्टर-45 उप डाकघर गुडगांव
355.	हिसार मुख्य डाकघर
356.	अग्रोहा उप डाकघर
357.	अनाज मंडी उप डाकघर हांसी
358.	आटो मोबाईल मार्किट उप डाकघर हिसार
359.	मट्ट कलां उप डाकघर
360.	बड़ोपाल उप डाकघर
361.	बी.एस.एफ. हिसार उप डाकघर
362.	बरवाला उप डाकघर
363.	बरवाला मंडी उप डाकघर
364.	बारु उप डाकघर
365.	बदुना उप डाकघर
366.	धरसूल कलां उप डाकघर
367.	फतेहाबाद एल.एस.जी. उप डाकघर
368.	फतेहाबाद कचहरी उप डाकघर
369.	हैफड स्पनिंग मिल उप डाकघर हांसी
370.	हांसी एल एस जी उप डाकघर
371.	हांसी सिटी उप डाकघर
372.	हिसार सिटी उप डाकघर
373.	एच.ए.यू. हिसार उप डाकघर
374.	हिसार कचहरी उप डाकघर
375.	हिसार नई मंडी उप डाकघर
376.	हिसार टैक्सटाइल मिल्स उप डाकघर
377.	जाखल मंडी उप डाकघर
378.	खण्डा खेड़ी उप डाकघर
379.	एम.टी. हिसार उप डाकघर
380.	एम.सी. हिसार उप डाकघर
381.	मिनी सैक्ट्रीएट हिसार उप डाकघर

382.	मंडी आदमपुर एल.एस.जी. उप डाकघर
383.	नई मंडी फतेहाबाद उप डाकघर
384.	नालवा उप डाकघर
385.	न्यू अनाज मंडी हिसार उप डाकघर
386.	नारनौद उप डाकघर
387.	पबरा उप डाकघर
388.	पटेल नगर उप डाकघर हिसार
389.	रतिया एल.एस.जी. उप डाकघर
390.	सिसाई उप डाकघर
391.	सटरोड खुर्द उप डाकघर
392.	थे. कोर्ट हांसी
393.	टोहाना सिटी उप डाकघर
394.	टोहाना मंडी एल.एस.जी. उप डाकघर
395.	लिकलाना मंडी उप डाकघर
396.	विद्युत नगर उप डाकघर हिसार
397.	जी.जे.यू. उप डाकघर हिसार
398.	यू.ई. ॥ उप डाकघर हिसार
399.	नारनौल मुख्य डाकघर
400.	बाहू उप डाकघर
401.	बावल एल.एस.जी.
402.	बवानिया उप डाकघर
403.	दाहिना उप डाकघर
404.	धारण-॥ उप डाकघर
405.	धारुहेड़ा - ॥ उप डाकघर
406.	जी.वी. रिवाड़ी-॥ उप डाकघर
407.	गुरुआनी-॥ उप डाकघर
408.	इंडस्ट्रियल एरिया धारुहेड़ा उप डाकघर
409.	कनीना एल.एस.जी. उपडाकघर
410.	खोल-॥ उप डाकघर
411.	खोरी-॥ उप डाकघर
412.	कोसली एल.एस.जी. (उप डाकघर)
413.	कुंड-॥ उप डाकघर
414.	मंडी अटेली (एल.एस.जी. उप डाकघर)
415.	मिनी सैक्ट्रिएट उप डाकघर नारनौल
416.	महेन्द्रगढ़ उप डाकघर
417.	एम.टी. रिवाड़ी-॥ उप डाकघर
418.	नाहर-॥ उप डाकघर
419.	नारनौल सिटी उप डाकघर
420.	नारनौल कचहरी-॥ उप डाकघर
421.	नंगल चौधरी-॥ उप डाकघर
422.	नंगल सिरौही उप डाकघर
423.	एन.ए.एम. रिवाड़ी उप डाकघर
424.	पहलवास-॥ उप डाकघर
425.	रिवाड़ी एच.एस.जी.-॥ उप डाकघर

426.	सतनाली-॥ उप डाकघर
427.	टी.आर. रिवाड़ी उप डाकघर
428.	रोहतक मुख्य डाकघर
429.	अनवल उप डाकघर ॥
430.	आर्य नगर (टी.उप डाकघर)रोहतक
431.	आर्य नगर - झज्जर उप डाकघर
432.	अस्थल बोहर उप डाकघर ॥
433.	बंगला साहिब टी.उप डाकघर
434.	बेरी उप डाकघर-॥
435.	बलौट उप डाकघर-॥
436.	बी.एस. रोहतक टी.उप डाकघर
437.	बालीआना ई.डी.उप डाकघर
438.	चिरी ई.डी.उप डाकघर
439.	डी.एल.एफ. कालोनी उप डाकघर रोहतक
440.	धाकला उप डाकघर-॥
441.	दिग्गहल उप डाकघर ॥
442.	दुबलधन उप डाकघर ।
443.	दुजाना उप डाकघर-॥
444.	दुर्गा भवन रोहतक टी.उप डाकघर
445.	गांधी कैम्प उप डाकघर रोहतक
446.	गोहाना रोड रोहतक टी.एस.ओ.-।
447.	झज्जरोड रोहतक टी.उप डाकघर-।
448.	झज्जर उप डाकघर
449.	कनौर उप डाकघर-॥
450.	कलानौर उप डाकघर-॥
451.	कनक मंडी रोहतक टी.उप डाकघर।
452.	कनसाला उप डाकघर-॥
453.	लखन माजरा-॥ उप डाकघर
454.	मछरौली उप डाकघर ॥
455.	मदीना उप डाकघर ॥
456.	मटन हेल उप डाकघर
457.	मैडिकल काजिल रोहतक उप डाकघर
458.	मेहम उप डाकघर-॥
459.	एम.टी. रोहतक टी.उप डाकघर
460.	मौखरा उप डाकघर -।
461.	नेहरू कालेज झज्जर उप डाकघर
462.	निनदाना उप डाकघर
463.	प्रेम नगर रोहतक टी. उप डाकघर-।
464.	रोहतक मंडी टी.उप डाकघर ॥
465.	रोहतक टाऊन टी. उप डाकघर IV
466.	सहलावास उप डाकघर-॥
467.	सिंधी उप डाकघर-॥
468.	शिवाजी कालोनी टी उप डाकघर-॥
469.	सिरसा मुख्य डाकघर
470.	ऐलनाबाद उप डाकघर

471.	ओढा उप डाकघर
472.	खैरपुर उप डाकघर
473.	कलावाली उप डाकघर
474.	गोरीवाला उप डाकघर
475.	डिंग उप डाकघर
476.	चौटाला उप डाकघर
477.	डबवाली टाऊन उप डाकघर
478.	बेगु रोड सिरसा उप डाकघर
479.	बड़ा गुढा उप डाकघर
480.	बाऊदीन उप डाकघर

481.	मण्डी डबवाली उप डाकघर
482.	मिनिस्ट्रियल सिरसा उप डाकघर
483.	मंडी टाऊनशिप उप डाकघर
484.	नई मण्डी सिरसा उप डाकघर
485.	रानिया उप डाकघर
486.	सिरसा टाऊन उप डाकघर
487.	श्रीजीवन नगर उप डाकघर
488.	सिकन्दरपुर उप डाकघर

[फा. सं. 11018-1/2001-रा. भा.]

अशोक कुमार सचदेव, उप निदेशक (राजभाषा)

Ministry of Communications & IT
(Department of Posts)

New Delhi, the 15th April, 2002

s. o. 1376.—In pursuance of Rule 10 (4) of the Official Language (use for official purposes of the Union) Rules, 1976, the Central Government hereby notifies the following subordinate offices of the Department of Posts where 80 percent staff has acquired the working knowledge of Hindi:

- | | |
|-------------------------------------|-----------------------------------|
| 1. Ambala Head Post Office – 133001 | 23. Bilaspur SO |
| 2. Ambala Alexander Road SO | 24. Boh SO |
| 3. Ambala A.K. Line SO | 25. Budia SO |
| 4. Ambala Commissioner Court SO | 26. Chuchrauli SO |
| 5. Gobind Nagar Ambala SO | 27. Dheen SO |
| 6. Hargoolal Ambala SO | 28. Jagadhri SO |
| 7. I.A.F. Line Ambala SO | 29. Jagadhri Workshop SO |
| 8. Ambala Kacha Bazar SO | 30. Jagadhri Town SO |
| 9. Kharga Cantt. Canteen Ambala SO | 31. Jagadhri Court SO |
| 10. Kuldeep Nagar Ambala SO | 32. Kalawar SO |
| 11. Industrial Estate Ambala SO | 33. Kesari SO |
| 12. Mahesh Nagar Ambala SO | 34. Kharwan SO |
| 13. P & T Colony Ambala SO | 35. Khijrabad East SO |
| 14. Punjabi Mohalla Ambala SO | 36. Mulana SO |
| 15. Sedar Bazar Ambala SO | 37. Mustafabad SO |
| 16. Topkhana Bazar Ambala SO | 38. Radaur SO |
| 17. Rail Vihar Ambala SO | 39. Sadhaura SO |
| 18. Adhoya SO | 40. Saha SO |
| 19. Babyal SO | 41. Sarawan SO |
| 20. Budh Kalan SO | 42. Yamuna Nagar SO |
| 21. Barara SO | 43. Auto Industry Yamuna Nagar SO |
| 22. Bihta SO | |

44. Model Town Yamuna Nagar SO
45. Sugar Mill Yamuna Nagar SO
46. Railway Road Yamuna Nagar SO
47. Rampura Colony Yamuna Nagar SO
48. Bhatia Nagar Yamuna Nagar SO
49. Mudhat Colony Yamuna Nagar SO
50. Workshop Road Yamuna Nagar SO
51. Ambala City Head Post Office
52. Ambala City Adarsh Nagar SO
53. Ambala City Bazar Basti Ram SO
54. Ambala City D.A.V. College SO
55. Ambala City Civil Line SO
56. Ambala City Kachhri SO
57. Ambala City Prem Nagar SO
58. Ambala City Preet Nagar SO
59. Ambala City Patel Nagar SO
60. Ambala City Model Town SO
61. Ambala City Railway Road SO
62. Ambala City Sabzi Mandi SO
63. Ambala City Session Court SO
64. Ambala City Baldev Nagar SO
65. Ambala City Motor Stand SO
66. Ambala City Anaz Mandi SO
67. Ambala City Geeta Nagri SO
68. B.C.W. Suraj Pur SO
69. Barwala SO
70. Chandi Mandir SO
71. Chandi Mandir Cantt. SO
72. C.R.P.F. Pinjore SO
73. I.T.B.P. Bhanu SO
74. Jatwar SO
75. Kalka SO
76. Morni SO
77. Naneola-(E.D.S.O.)
78. Kalka R.S. SO
79. Naraingarh SO
80. Panchkula G.K. SO
81. Panchkula Sector-4 SO
82. Panchkula Sector-15 SO
83. Industrial Estate
Panchkula SO
84. Panchkula
Sector-8(Delivery) SO
85. Panjokjhra (E.D.S.O.)
86. Pinjore SO
87. H.M.T. Pinjore SO
88. Raipur Rani SO
89. Ramgarh SO
90. Shehzadpur SO
91. Kurukshetra Head Post
Office
92. Amin SO
93. Babain SO
94. Cheeka SO
95. Dand SO
96. Fatehpur SO
97. Guhla SO
98. Gumthala Garu SO
99. Jhansa SO
100. Esmailabad SO
101. Kaithal Mandi SO
102. Kaithal City SO
103. Karnal Road Kaithal SO
104. Siwan Gate Kaithal SO
105. Jind Road Kaithal SO
106. Kaul SO
107. Kalayat SO
108. Kurukshetra Birla
Mandi SO
109. Kurukshetra Judicial
Complex SO
110. Kurukshetra Mohan
Nagar SO
111. Kurukshetra Thanesar
Town SO
112. Kurukshetra Engineer
College SO
113. Kurukshetra University
SO

- | | |
|-------------------------------------|---------------------------------|
| 114. Ladwa SO | 154. Salwan SO |
| 115. Ladwa New Grain Market SO | 155. Trauri SO |
| 116. Pai SO | 156. Trauri Mandi SO |
| 117. Pehwa SO | 157. Panipat Head Post Office |
| 118. Pehwa Sarswati Mandir SO | |
| 119. Pipli SO | 158. Atta SO |
| 120. Pundri SO | 159. Hathwara SO |
| 121. Rajaund SO | 160. Israna SO |
| 122. Shahbad Markanda SO | 161. Madlauda SO |
| 123. Shahbad Grain Market SO | 162. Noltha SO |
| 124. Siwan SO | 163. Panipat Bias Project SO |
| 125. Thol SO | 164. Panipat G.T. Road SO |
| 126. Karnal Head Post Office | 165. Panipat City SO |
| 127. Asandh SO | 166. Panipat Khadi Ashram SO |
| 128. Ballah SO | 167. Panipat Kranti Nagar SO |
| 129. Gharaunda SO | 168. Panipat Krishan Pura SO |
| 130. Garhi Birbal SO | 169. Panipat Model Town SO |
| 131. Indri Town SO | 170. Panipat Mandi SO |
| 132. Indri SO | 171. Panipat N.F.L. SO |
| 133. Judla SO | 172. Panipat New Sabzi Mandi SO |
| 134. Karnal City SO | 173. Panipat Patel Nagar SO |
| 135. Karnal General Bus Stand SO | 174. Panipat Sugar Mill SO |
| 136. Karnal Housing Board Colony SO | 175. Panipat Thermal Project SO |
| 137. Karnal Industrial Area SO | 176. Panipat Refinery SO |
| 138. Karnal Kachehri SO | 177. Patti Kalyana SO |
| 139. Karnal Model Town SO | 178. Samalkha SO |
| 140. Karnal Nai Mandi SO | 179. Jind Head Post Office |
| 141. Karnal N.D.R.I. SO | 180. Alewa SO |
| 142. Karnal Pratap Pura SO | 181. Danauda Kalan SO |
| 143. Karnal Ram Nagar SO | 182. Dhatrath SO |
| 144. Karnal Railway Road SO | 183. Jind Palika Bazar SO |
| 145. Karnal Sadar Bazar SO | 184. Jind Mini Secretariat SO |
| 146. Karnal Sector-6 SO | 185. Jind Patiala Chouk SO |
| 147. Kunjpura SO | |
| 148. Kunjpura Sainik School SO | |
| 149. Madhuban SO | |
| 150. Madhuban P.T.C. SO | |
| 151. Nilo Kheri SO | |
| 152. Nilo Kheri G.I.P. SO | |
| 153. Nising SO | |

- | | |
|--------------------------------------|--|
| 186. Jind Panjabi Bazar SO | 226. Ram Bazar Sonapat SO |
| 187. Jind Railway Station SO | 227. Rohaat SO |
| 188. Jind Road Rohtak SO | 228. Sector-14 Sonapat SO |
| 189. Julana SO | 229. Sisana SO |
| 190. Narwana SO | 230. Sonapat Kchehri SO |
| 191. Narwana City SO | 231. Sonapat Mandi SO |
| 192. Pillu Khera SO | 232. S.S. Park Sonapat SO |
| 193. Safidon SO | 233. Bahadurgarh Head
Post Office |
| 194. Safidon City SO | 234. Asaudha SO |
| 195. Shamlo Kalan SO | 235. Badli SO |
| 196. Uchana SO | 236. Bahadurgarh Mandi SO |
| 197. Atlas Cycle Sonapat SO | 237. Chhara SO |
| 198. Behl Garh SO | 238. Hasangarh SO |
| 199. Baroda SO | 239. Industrial Area
Bahadurgarh SO |
| 200. Bhatgaon SO | 240. Main Bazar
Bahadurgarh SO |
| 201. Bhaswal Kalan SO | 241. Bhondsi SO |
| 202. Bhim Nagar Sonapat SO | 242. Sampla SO |
| 203. Bichpadi SO | 243. Bhiwani Head Post Office |
| 204. Butana SO | 244. Achina SO |
| 205. Bus Stand Gohana SO | 245. Bhond SO |
| 206. Engineer College Murthal SO | 246. Badhra SO |
| 207. Farmana SO | 247. Birhi Kalan SO |
| 208. Ganj Bazar Sonapat SO | 248. Barwa SO |
| 209. Ganaur SO | 249. Bhawani Khera SO |
| 210. Ganaur City SO | 250. Birla Colony Bhiwani SO |
| 211. Gohana SO | 251. Bhel SO |
| 212. Gohana Mandi SO | 252. Bus Stand Bhiwani SO |
| 213. Gohana Road Sonapat SO | 253. B.S.E.H. Bhiwani SO |
| 214. Housing Board Colony Sonapat SO | 254. Chiria SO |
| 215. Industrial Estate Kundli SO | 255. Jhang SO |
| 216. Jakholi SO | 256. Charkhi Dadri SO |
| 217. Jaun SO | 257. Charkhi Dadri
Factory SO |
| 218. Kanya Gurukul Khanpur SO | 258. Charkhi Dadri City
SO |
| 219. Kharkhoda OS | 259. Holu Bazar
Bhiwani SO |
| 220. Model Town Sonapat SO | |
| 221. Murthal SO | |
| 222. Mudlawar SO | |
| 223. Nahri SO | |
| 224. P.S. Rai SO | |
| 225. Purkharu SO | |

- | | |
|-------------------------------------|-------------------------|
| 260. Jain Chouk Bhiwani SO | 298. Neighbourhood |
| 261. Jamalpur SO | No-2 Faridabad |
| 262. Jui Khurd SO | N.H. SO |
| 263. Jho Jhu Kalan SO | 299. N.H.-III Faridabad |
| 264. Jolan Hospital Bhiwani SO | SO |
| 265. Keru SO | 300. N.H.-IV Faridabad |
| 266. Loharu Bazar Bhiwani SO | SO |
| 267. Manheru SO | 301. New Town Palwal |
| 268. Mini Secretariat Bhiwani SO | SO |
| 269. Mudhal Khurd SO | 302. Palwal SO |
| 270. Radhan SO | 303. Press Colony |
| 271. Ranila E.D.SO | Faridabad SO |
| 272. Siwani Mandi SO | 304. Sector-7 Faridabad |
| 273. Sanavar SO | SO |
| 274. Tosham SO | 305. Sector-8 Faridabad |
| 275. Tigrana SO | SO |
| 276. J.C. Charkhi Dadri SO | 306. Sector-9 Faridabad |
| 277. Khare Kalan SO | SO |
| 278. Faridabad Head Post Office | 307. Sector-15 |
| 279. Amar Nagar Faridabad SO | Faridabad SO |
| 280. Oshangabad SO | 308. Sector-16 |
| 281. Balabhgarh SO | Faridabad SO |
| 282. Chawla Colony Balabhgarh SO | 309. Sector-16 A |
| 283. Capital Bus Stand Faridabad SO | Faridabad SO |
| 284. Escort Nagar Faridabad SO | 310. Sector-22 |
| 285. Factory Road Faridabad SO | Faridabad SO |
| 286. Factory Area Faridabad SO | 311. Sector-1 Faridabad |
| 287. Faridabad City SO | SO |
| 288. Feroze Gandhi Nagar Faridabad | 312. Tingran SO |
| SO | 313. N.I.F.F. Faridabad |
| 289. Grain Market Palwal SO | SO |
| 290. G.T.Road Faridabad SO | 314. Sector-29 |
| 291. Hasanpur SO | Faridabad SO |
| 292. Hodal SO | 315. Mini Secretariat |
| 293. Hathin SO | Sector-12 FBD.SO |
| 294. Industrial Area Faridabad SO | 316. Suraj Kund |
| 295. Jawahar Colony Faridabad SO | Faridabad SO |
| 296. Jawahar Nagar | 317. Set-3 Ballabhgarh |
| Palwal SO | SO |
| 297. Mathura Road Faridabad SO | |

- | | |
|--------------------------------|--------------------------|
| 318. Gurgaon Head Post Office | Gurgaon SO |
| 319. D.L.F. Qutub Enclave SO | 351. Sohna Adda |
| 320. Nuh SO | Gurgaon SO |
| 321. Narsingh Pur Factory Area | 352. Taru SO |
| GGN SO | 353. Urban Estate |
| 322. Sohna SO | Gurgaon SO |
| 323. Ferozepur Jhirka SO | 354. Sector-45 |
| 324. Heli Mandi SO | Gurgaon SO |
| 325. Khalilpur SO | 355. Hisar Head Post |
| 326. Khudasa Road SO | Office |
| 327. Palam Vihar Gurgaon SO | 356. Agroha SO |
| 328. Palam Road Gurgaon SO | 357. Anaj Mandi |
| 329. Pataudi SO | Hansi SO |
| 330. Air Force Gurgaon SO | 358. Automobile Market |
| 331. Arjun Nagar Gurgaon SO | Hisar SO |
| 332. Badshahpur SO | 359. Bhatt Kalan SO |
| 333. Bohra Kalan SO | 360. Badopal SO |
| 334. Basai Road Gurgaon SO | 361. B.S.F. Hisar SO |
| 335. Bhondsi SO | 362. Barwala SO |
| 336. Farukh Nagar SO | 363. Barwala Mandi SO |
| 337. Garhi Harsaru SO | 364. Baru SO |
| 338. Gurgaon Kachehri SO | 365. Badna SO |
| 339. Industrial Complex | 366. Dharsul Kalan SO |
| Dundhera SO | 367. Fetehabad L.S.G. |
| 340. Industrial Estate | SO |
| Gurgaon SO | 368. Fetehabad Kachehri |
| 341. Zekab Pura SO | SO |
| 342. Mini Secretariat SO | 369. Hafed Spinning |
| 343. Nagina SO | Mill Hansi SO |
| 344. Nanu Kalan SO | 370. Hansi L.S.G. SO |
| 345. New Colony | 371. Hansi City SO |
| Gurgaon SO | 372. Hisar City SO |
| 346. N.S.G. Camp | 373. H.A.U. Hisar SO |
| Manesar SO | 374. Hisar Kachehri SO |
| 347. Punhana SO | 375. Hisar Nai Mandi |
| 348. Railway Road | SO |
| Gurgaon SO | 376. Hisar Textile Mills |
| 349. Sector-17 | SO |
| Gurgaon SO | 377. Jakhal Mandi SO |
| 350. Shivaji Nagar | 378. Khanda Kheri SO |

- | | |
|--------------------------------------|-----------------------------------|
| 379. M.T. Hisar SO | 416. Mahendergarh SO |
| 380. M.C. Hissar SO | 417. M.T. Rewari-II SO |
| 381. Mini Secretariat Hissar SO | 418. Nahar II SO |
| 382. Mandi Adampur L.S.G. SO | 419. Narnaul City SO |
| 383. Nai Mandi Fetehabad SO | 420. Narnaul
Kachehri-II SO |
| 384. Nalwa SO | 421. Nangal
Chaudhri -II SO |
| 385. New Anaj Mandi Hisar SO | 422. Nangal Sirohi SO |
| 386. Narnaund SO | 423. N.A.M. Rewari SO |
| 387. Pabra SO | 424. Pehalwas-II SO |
| 388. Patel Nagar Hisar SO | 425. Rewari
H.S.G.-II SO |
| 389. Ratia L.S.G. SO | 426. Satnali-III SO |
| 390. Sisai SO. | 427. T.R. Rewari SO |
| 391. Satrod Khurd SO | 428. Rohtak Head Post
Office |
| 392. Tha Court Hansi SO | 429. Anwal SO II |
| 393. Tohana City SO | 430. Arya Nagar (T.SO)
Rohtak |
| 394. Tohana Mandi L.S.G. SO | 431. Arya Nagar
Jhajjar SO |
| 395. Liklana Mandi SO | 432. Asthal Bohar SO.II |
| 396. Vidyut Nagar Hisar SO | 433. Bangla Sahib T. SO |
| 397. G.J.U. Hisar SO | 434. Beri SO III |
| 398. U.E. II Hisar SO | 435. Balot SO -III |
| 399. Narnaul Head Post Office | 436. B.S. Rohtak T SO |
| 400. Bahu SO | 437. Baliana E.D. SO |
| 401. Bawal L.S.G. SO | 438. Chiri E.D. SO |
| 402. Bawania SO | 439. D.L.F. Colony
Rohtak SO |
| 403. Dahina SO | 440. Dhakala SO II |
| 404. Dharan-II SO | 441. Deghal SO II |
| 405. Dharuhera-III SO | 442. Dubaldhan SO I |
| 406. G.V. Rewari-II SO | 443. Dujana SO II |
| 407. Guruaini-II SO | 444. Durga Bhawan
Rohtak T. SO |
| 408. Industrial Area
Dharuhera SO | 445. Gandhi Camp
Rohtak SO |
| 409. Kanina L.S.G. SO | |
| 410. Khol-II SO | |
| 411. Khorii-II SO | |
| 412. Kosli L.S.G. SO | |
| 413. Kund-III SO | |
| 414. Mandi Ateli
(L.S.G. SO.) | |
| 415. Mini Secretariat
Narnaul SO | |

- | | |
|----------------------------------|-----------------------------|
| 446. Gohana Road Rohtak T. SO | 469. Sirsa Head Post Office |
| 447. Jhajjar Road Rohtak T. SO-I | 470. Alnabad SO |
| 448. Jhajjar SO | 471. Odha SO |
| 449. Kanaur SO-II | 472. Kherpur SO |
| 450. Kalanaur S.O.-III | 473. Kalanwali SO |
| 451. Kanak Mandi Rohtak T. SO.-I | 474. Goriwala SO |
| 452. Kansala SO I | 475. Ding SO |
| 453. Lakhan Majra-III SO | 476. Chautala SO |
| 454. Machhrauli SO II | 477. Dabwali Town SO |
| 455. Madina SO II | 478. Vegu Road Sirsa SO |
| 456. Matan Hel SO | 479. Bada Gudha SO |
| 457. Medical College Rohtak SO | 480. Baodin SO |
| 458. Meham SO.-III | 481. Mandi Dabwali SO |
| 459. M..T. Rohtak T SO | 482. Ministerial Sirsa SO |
| 460. Mokhra SO I | 483. Mandi Township SO |
| 461. Nehru College Jhajjar SO | 484. Nai Mandi Sirsa SO |
| 462. Nindana SO | 485. Ranian SO |
| 463. Prem Nagar Rohtak T.SO.-I | 486. Sirsa Town SO |
| 464. Rohtak Mandi T.SO-III | 487. Shrijiwan Nagar SO |
| 465. Rohtak Town
T. SO IV | 488. Sikanderpur SO |
| 466. Sehlwas SO II | |
| 467. Sindhi SO II | |
| 468. Shivaji Colony
T SO.-III | |

[No. 11018-1/2001-OL
A. K. SACHDEV, Dy. Director(OL

पेट्रोलियम और प्राकृतिक गैस मंत्रालय

नई दिल्ली 10 अप्रैल, 2002

का. आ. 1377.—केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि पश्चिमी बंगाल राज्य में हल्दिया से बिहार राज्य में बरौनी तक अपरिष्कृत तेल के परिवहन के लिए इंडियन ऑयल कॉरपोरेशन लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;

और ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि इस अधिसूचना से संलग्न अनुसूची में वर्णित भूमि में उपयोग के अधिकार का अर्जन किया जाए ;

अतः, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको, भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर उसमें उपयोग के अधिकार का अर्जन करने या भूमि के नीचे पाइपलाइन बिछाने के संबंध में सक्षम प्राधिकारी , श्री प्रदीप गोबिन्दा चौधरी , इंडियन ऑयल कारपोरेशन लिमिटेड, हल्दिया-बरौनी अपरिष्कृत तेल पाइपलाइन संवर्धन परियोजना, पोस्ट-खंजनचक, कसबेरीया, जिला-मिदनापुर (पश्चिमी बंगाल) को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची					
पुलिस थाना : महिशादल		जिला : मिदनापूर		राज्य : पश्चिमी बंगाल	
गाँव	अधिकारिता सूची संख्या	प्लॉट संख्या	क्षेत्र		
			हेक्टेयर	आर	सेंटीआर
1	2	3	4	5	6
वामुनया	134	1511	00	02	07
		1512	00	00	20
केशवपुर जलपाइ	133	723	00	01	12
		788	00	00	41
		796	00	00	20
कञ्जपुर जलपाइ	132	174/1283	00	08	17
		178/1320	00	02	59
		181/1335	00	04	00
		181/1336	00	00	20
		181/1337	00	03	43
		182/1338	00	06	03
		824/1407	00	00	34
राजारामपुर	130	2868/2903	00	00	20
		2869/2945	00	02	78
दक्षिण कश्मि नगर	129	429	00	00	20
पुलिस थाना : नन्दकुमार					
कल्यानपूर	125	387	00	00	86
		657	00	07	80
माधवपूर	122	256	00	01	50
भवानीपूर	73	1057	00	00	44
शामसुन्दरपूर	74	2	00	03	01
		9	00	07	98

1	2	3	4	5	6
		11	00	02	59
		12	00	00	20
		13	00	13	92
		18	00	01	39
		19	00	07	70
		20	00	00	20
		21	00	00	32
		22	00	00	55
		25	00	00	20
		43	00	02	78
		44	00	00	20
		50	00	04	73
		53	00	05	20
		54	00	05	24
		55	00	03	01
		56	00	07	33
		58	00	00	20
		59	00	01	11
		60	00	04	04
		154	00	04	70
		184	00	01	80
		185	00	05	29
		186	00	05	38
		187	00	03	71
		197	00	14	75
		198	00	09	46
		199	00	01	01
		203	00	04	36
		204	00	01	67
		205	00	00	20
ठाकूरचक	75	567	00	03	26
		754	00	00	97
		773	00	00	20

1	2	3	4	5	6
		774	00	05	24
		775	00	05	28
		776	00	09	00
		779	00	15	78
		781	00	00	20
		782	00	00	20
		784	00	02	97
		753/849	00	01	44
दक्षिण दामोदरपूर	28	100	00	02	45
		102	00	01	71
		115	00	03	74
		721	00	01	54
		1479	00	00	73
चक सिमूलिया	14	511	00	00	62
नछिपूर	27	11	00	00	58
महिसगांट	21	217	00	01	10
		223	00	01	14
		262	00	01	01
मल्लिक चक	20	179	00	00	95
		181	00	00	98
		188	00	01	10
वडचवरिया	17	62	00	04	65
		69	00	04	49
पुलिस थाना : पौणकुडा					
पूरुणात्तमपूर	331	1212/1655	00	01	42
फकिरगंज	332	270	00	00	96

1	2	3	4	5	6
		271	00	00	60
देहाटि	72	719	00	02	05
पुर्वपितपूर	69	1364	00	00	20
		1393	00	00	20
		1831	00	00	20
		1365/1982	00	02	44
		1365/2243	00	02	18
		1420/1988	00	02	28
केशापाट	50	475	00	02	47
हातिशाल	51	2698	00	00	69
पुलिस थाना : तमलूक					
कलिकपूर	256	230	00	04	50
चक्रुर्गादाम	115	630	00	01	73
		805	00	00	80
पुलिस थाना : घाटाल					
शीलाराजनगर	144	872	00	04	37
भरीवलरामकुन्दु	67	476	00	00	87
		476/795	00	06	98
पुलिस थाना : दामपूर					
पंच वरा	165	939	00	02	34
		951	00	02	44
		952	00	00	20
जटगावदरघनपूर	167	597	00	18	11

1	2	3	4	5	6
चक सूलतानपूर	163	12	00	00	20
		1220	00	03	16
		1221	00	00	40
		2258	00	00	50
लक्ष्मण चक	82	993	00	01	20
जटाचरपूर	74	454	00	01	40
		697	00	02	71
बारजालालपूर	75	462	00	13	50
खर राद्याकृष्णपूर	68	745	00	00	87
सूजानगर	53	458/1132	00	02	02
बासूदेबपूर	63	1801	00	07	47
		1803	00	00	69
		1805	00	00	89
		1819	00	03	48
		2424	00	03	10
		994/2375	00	00	92
		1777/2412	00	02	14
		1778/2413	00	01	62
		1801/2414	00	03	62
बदकनपूर	64	111	00	01	53
		293	00	01	14
		792	00	00	20
		803	00	00	40
		806	00	03	41
		830	00	01	46
		832	00	05	47
		833	00	02	88

1	2	3	4	5	6
		859	00	02	69
		868	00	00	20
		869	00	04	50
		870	00	04	26
		880	00	21	00
		881	00	00	20
		905	00	00	20
		951	00	00	77
		952	00	00	40
		953	00	02	72
		963	00	00	20
		884/944	00	00	86

[फा. सं. आर. 25011/8/2002/ओ.आर. I]

एस. एस. केमवाल, अवर सचिव

Ministry of Petroleum and Natural Gas

New Delhi, the 10th April, 2002

S. O. 1377.— Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of crude oil from Haldia in the State of West Bengal to Barauni in the State of Bihar, a pipeline should be laid by the Indian Oil Corporation Limited;

And whereas, it appears that for the purpose of laying such pipelines it is necessary to acquire the right of user in the land described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person, interested in the land described in the said Schedule may within twenty one days from the date on which the copies of this notification, as published in the Gazette of India, are made available to the general public, object in writing to the acquisition of the right of user therein or laying of the pipeline under the land to Sri Pradip Govinda Chowdhuri, Competent Authority, Indian Oil Corporation Limited, Augmentation of Haldia - Barauni Crude Pipeline Project, Post- Khanjanchak, Kasberia, District- Midnapur (West Bengal).

Police Station : Mahishadal		District : Midnapur		State : West Bengal	
Village	Jurisdiction	Plot.	Area		
	List No.	No.	Hectares	Ares	Centiares
1	2	3	4	5	6
Bamunya	134	1511	00	02	07
		1512	00	00	20
Keshabpur Jalpai	133	723	00	01	12
		788	00	00	41
		796	00	00	20
Kanchanpur Jalpai	132	174/1283	00	08	17
		178/1320	00	02	59
		181/1335	00	04	00
		181/1336	00	00	20
		181/1337	00	03	43
		182/1338	00	06	03
		824/1407	00	00	34
Rajarampur	130	2868/2903	00	00	20
		2869/2945	00	02	78
Dakshin Kashimnagar	129	429	00	00	20
Police Station : Nandakumar					
Kalyanpur	125	387	00	00	86
		657	00	07	80
Madhabpur	122	256	00	01	50
Bhabanipur	73	1057	00	00	44
Shyam Sundarpur	74	2	00	03	01
		9	00	07	98

1	2	3	4	5	6
		11	00	02	59
		12	00	00	20
		13	00	13	92
		18	00	01	39
		19	00	07	70
		20	00	00	20
		21	00	00	32
		22	00	00	55
		25	00	00	20
		43	00	02	78
		44	00	00	20
		50	00	04	73
		53	00	05	20
		54	00	05	24
		55	00	03	01
		56	00	07	33
		58	00	00	20
		59	00	01	11
		60	00	04	04
		154	00	04	70
		184	00	01	80
		185	00	05	29
		186	00	05	38
		187	00	03	71
		197	00	14	75
		198	00	09	46
		199	00	01	01
		203	00	04	36
		204	00	01	67
		205	00	00	20
Thakurchak	75	567	00	03	26
		754	00	00	97
		773	00	00	20

1	2	3	4	5	6
		774	00	05	24
		775	00	05	28
		776	00	09	00
		779	00	15	78
		781	00	00	20
		782	00	00	20
		784	00	02	97
		753/849	00	01	44
Dakshin Damodarpur	28	100	00	02	45
		102	00	01	71
		115	00	03	74
		721	00	01	54
		1479	00	00	73
Chak Simulya	14	511	00	00	62
Nachhipur	27	11	00	00	58
Mahisgot	21	217	00	01	10
		223	00	01	14
		262	00	01	01
Mallik Chak	20	179	00	00	95
		181	00	00	98
		188	00	01	10
Baich Berya	17	62	00	04	65
		69	00	04	49
Police Station : Panskura					
Purusattampur	331	1212/1655	00	01	42
Fakirganj	332	270	00	00	96

1	2	3	4	5	6
		271	00	00	60
Dehati	72	719	00	02	05
Purbapitpur	69	1364	00	00	20
		1393	00	00	20
		1831	00	00	20
		1365/1982	00	02	44
		1365/2243	00	02	18
		1420/1988	00	02	28
Keshapat	50	475	00	02	47
Hatishal	51	2698	00	00	69
Police Station : Tamluk					
Kalikapur	256	230	00	04	50
Chak Durgadas	115	630	00	01	73
		805	00	00	80
Police Station : Ghatal					
Silarajnagar	144	872	00	04	37
Bheri Balaramkundu	67	476	00	00	87
		476/795	00	06	98
Police Station : Daspur					
Panch Berya	165	939	00	02	34
		951	00	02	44
		952	00	00	20
Jot Gobardhanpur	167	597	00	18	11

1	2	3	4	5	6
Chak Sultanpur	163	12	00	00	20
		1220	00	03	16
		1221	00	00	40
		2258	00	00	50
Lakshmanchak	82	993	00	01	20
Jatadharpur	74	454	00	01	40
		697	00	02	71
Barjalalpur	75	462	00	13	50
Khar Radhakrishnapur	68	745	00	00	87
Sujanagar	53	458/1132	00	02	02
Basudevpur	63	1801	00	07	47
		1803	00	00	69
		1805	00	00	89
		1819	00	03	48
		2424	00	03	10
		994/2375	00	00	92
		1777/2412	00	02	14
		1778/2413	00	01	62
		1801/2414	00	03	62
Baikunthapur	64	111	00	01	53
		293	00	01	14
		792	00	00	20
		803	00	00	40
		806	00	03	41
		830	00	01	46
		832	00	05	47
		833	00	02	88

1	2	3	4	5	6
		859	00	02	69
		868	00	00	20
		869	00	04	50
		870	00	04	26
		880	00	21	00
		881	00	00	20
		905	00	00	20
		951	00	00	77
		952	00	00	40
		953	00	02	72
		963	00	00	20
		884/944	00	00	86

[No. R. 25011/8/2002/OR I]
S.S. KEMWAL, Under Secy.

नई दिल्ली, 12 अप्रैल, 2002

का. आ. 1378.— केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि पश्चिमी बंगाल राज्य में हल्दिया से बिहार राज्य में बरौनी तक अपरिष्कृत तेल के परिवहन के लिए इंडियन ऑयल कॉरपोरेशन लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;

और ऐसी पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि इस अधिसूचना से संलग्न अनुसूची में वर्णित भूमि में उपयोग के अधिकार का अर्जन किया जाए ;

अतः, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

कोई व्यक्ति, जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको, भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर उसमें उपयोग के अधिकार का अर्जन करने या भूमि के नीचे पाइपलाइन बिछाने के संबंध में सक्षम प्राधिकारी, श्री प्रदीप गोबिन्दा चौधरी, इंडियन ऑयल कारपोरेशन लिमिटेड, हल्दिया-बरौनी अपरिष्कृत तेल पाइपलाइन परियोजना, पोस्ट-खंजनचक, कसबेरीया, जिला-मिदनापुर (पश्चिमी बंगाल) को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची					
पुलिस थाना : तमलूक		जिला : मिदनापूर		राज्य : पश्चिमी बंगाल	
गाँव	अधिकारिता सूची संख्या	प्लॉट संख्या	क्षेत्र		
			हेक्टेयर	आरे	सेंटीआरे
1	2	3	4	5	6
घारिन्दा	279	821	0	02	12
		827	0	06	09
		828	0	03	23
		829	0	00	60
		830	0	00	28
		832	0	01	37
		970	0	02	14
		971	0	01	67
		973	0	01	62
		984	0	01	41
		1045	0	00	72
		1046	0	00	04
		1048	0	00	16
		1050	0	01	74
पुलिस थाना : दासपूर					
दोरि अयेघा	214	1459	0	02	63
		1369/3837	0	00	23
		3838	0	01	50
		1356	0	00	51
		1386	0	01	34
		1385	0	00	98
गोमोखपोता	237	718	0	04	05
		720	0	08	90
		725	0	01	21
		726	0	01	53
		727	0	02	42
		728	0	02	83
		943	0	20	23

1	2	3	4	5	6
		944	0	00	04
		1049	0	09	71
		1521	0	04	25
		1537	0	06	87
		1538	0	00	04
		1544	0	01	20
		1545	0	09	30
		1546	0	03	48
		1549	0	09	10
		1550	0	06	47
		1551	0	00	20
		1567	0	00	12
		1569	0	01	21
		1570	0	02	22
		1571	0	02	02
		1572	0	00	60
		1573	0	01	78
		1574	0	02	02
		1576	0	01	41
		1577	0	01	69
		1537/2020	0	03	23
		725/1975	0	01	37
नारायनचक	238	931	0	03	64
		932	0	01	01
		936	0	00	22
		937	0	01	86
		938	0	10	52
		939	0	00	40
		942	0	01	61
		944	0	08	49
		976	0	00	20
		977	0	01	99
		920/1257	0	00	40

1	2	3	4	5	6
भगवतीपुर	211	2395	0	07	68
		2447	0	03	54
		2448	0	00	12
		2449	0	11	33
		2714	0	02	02
		2715	0	01	61
		2716	0	00	10
		2721	0	03	82
		2722	0	00	20
		2728	0	01	45
		2730	0	01	94
		2738	0	02	99
		2746	0	01	41
		2750	0	02	02
		2756	0	00	40
		2762	0	09	14
		2977	0	03	39
		2991	0	01	57
		2992	0	00	40
		2993	0	00	60
जट कनुरामगर	212	1401	0	00	80

पुलिस थाना : खानाकुल	जिला : हुगलि	राज्य : पश्चिमी बंगाल
कृष्णनगर	37	153
		00
		00
		02
		155
		00
		00
		20
		156
		00
		00
		42
		158
		00
		00
		28
		159
		00
		00
		40
		160
		00
		00
		89
		161
		00
		01
		13
		184
		00
		00
		40
		185
		00
		00
		65
		217
		00
		00
		04

1	2	3	4	5	6
		218/696	00	00	02
पुलिस थाना : दुबराजपुर		जिला : बिरभुम		राज्य : पश्चिमी बंगाल	
रेगना	163	587	0	00	20
		781	0	03	23
		782	0	06	07
		786	0	02	43
		787	0	00	60
		788	0	13	35
		789	0	02	43
		833	0	03	64
		834	0	06	07
		836	0	05	26
		839	0	00	80
		841	0	00	80
		842	0	06	07
		843	0	00	40
		959	0	11	33
		960	0	00	04
		961	0	02	43
		963	0	00	20
		1202	0	02	43
		2398	0	03	23
		2400	0	06	48
		548/2674	0	04	05
पुगंलापुर	3	518	0	01	21
		960	0	08	50
		965	0	04	05
		966	0	07	28
खोलाकुरि	5	3	0	08	50
		30	0	02	43
		31	0	04	86

1	2	3	4	5	6
		1178	0	06	88
लक्ष्मी नारायनपुर	4	310	0	04	86

[फा. सं. आर. 25011/9/2002/ओ.आर. I]
एस. एस. केमवाल, अवर सचिव.

New Delhi, the 12th April, 2002

S. O. 1378.— Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of crude oil from Haldia in the State of West Bengal to Barauni in the State of Bihar, a pipeline should be laid by the Indian Oil Corporation Limited;

And whereas, it appears that for the purpose of laying such pipelines it is necessary to acquire the right of user in the land described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person, interested in the land described in the said Schedule may within twenty one days from the date on which the copies of this notification, as published in the Gazette of India, are made available to the general public, object in writing to the acquisition of the right of user therein or laying of the pipeline under the land to Sri Pradip Govinda Chowdhuri, Competent Authority, Indian Oil Corporation Limited, Haldia - Barauni Crude Pipeline Project, Post- Khanjanchak, Kasberia, District- Midnapur (West Bengal).

SCHEDULE

Police Station : Tamluk		District : Midnapur		State : West Bengal	
Village	Jurisdiction	Plot.	Area		
	List No.	No.	Hectares	Ares	Centiares
1	2	3	4	5	6
Dharinda	279	821	0	02	12
		827	0	06	09
		828	0	03	23
		829	0	00	60
		830	0	00	28
		832	0	01	37
		970	0	02	14
		971	0	01	67
		973	0	01	62
		984	0	01	41
		1045	0	00	72
		1046	0	00	04
		1048	0	00	16
		1050	0	01	74
Police Station : Daspur					
Dori Ayodhya	214	1459	0	02	63
		1369/3837	0	00	23
		3838	0	01	50
		1356	0	00	51
		1386	0	01	34
		1385	0	00	98
Gomokhpota	237	718	0	04	05
		720	0	08	90
		725	0	01	21
		726	0	01	53
		727	0	02	42
		728	0	02	83
		943	0	20	23

1	2	3	4	5	6
		944	0	00	04
		1049	0	09	71
		1521	0	04	25
		1537	0	06	87
		1538	0	00	04
		1544	0	01	20
		1545	0	09	30
		1546	0	03	48
		1549	0	09	10
		1550	0	06	47
		1551	0	00	20
		1567	0	00	12
		1569	0	01	21
		1570	0	02	22
		1571	0	02	02
		1572	0	00	60
		1573	0	01	78
		1574	0	02	02
		1576	0	01	41
		1577	0	01	69
		1537/2020	0	03	23
		725/1975	0	01	37
Narayanchak	238	931	0	03	64
		932	0	01	01
		936	0	00	22
		937	0	01	86
		938	0	10	52
		939	0	00	40
		942	0	01	61
		944	0	08	49
		976	0	00	20
		977	0	01	99
		920/1257	0	00	40

1	2	3	4	5	6
Bhagabatipur	211	2395	0	07	68
		2447	0	03	54
		2448	0	00	12
		2449	0	11	33
		2714	0	02	02
		2715	0	01	61
		2716	0	00	10
		2721	0	03	82
		2722	0	00	20
		2728	0	01	45
		2730	0	01	94
		2738	0	02	99
		2746	0	01	41
		2750	0	02	02
		2756	0	00	40
		2762	0	09	14
		2977	0	03	39
		2991	0	01	57
		2992	0	00	40
		2993	0	00	60
Jot Kanuramgarh	212	1401	0	00	80

Police Station : Khanakul	District : Hooghly	State : West Bengal
Krishnanagar	37	153
		155
		156
		158
		159
		160
		161
		184
		185
		217

1	2	3	4	5	6
		218/696	00	00	02
<hr/>					
Police Station : Dubrajpur		District : Birbhum		State : West Bengal	
Rengna	163	587	0	00	20
		781	0	03	23
		782	0	06	07
		786	0	02	43
		787	0	00	60
		788	0	13	35
		789	0	02	43
		833	0	03	64
		834	0	06	07
		836	0	05	26
		839	0	00	80
		841	0	00	80
		842	0	06	07
		843	0	00	40
		959	0	11	33
		960	0	00	04
		961	0	02	43
		963	0	00	20
		1202	0	02	43
		2398	0	03	23
		2400	0	06	48
		548/2674	0	04	05
Punglapur	3	518	0	01	21
		960	0	08	50
		965	0	04	05
		966	0	07	28
Kholakuri	5	3	0	08	50
		30	0	02	43
		31	0	04	86

1	2	3	4	5	6
		1178	0	06	88
Lakshmi Narayanpur	4	310	0	04	86

[No. R. 25011/9/2002/OR I]
S.S. KEMWAL, Under Secy.

नई दिल्ली, 19 अप्रैल, 2002

का. आ. 1379.— केन्द्र सरकार, तेल उद्योग (विकास) अधिनियम, 1974 (1974 का 47) के खंड 3 के उपखंड (4) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए श्री बी.के.चतुर्वेदी, सचिव, पेट्रोलियम और प्राकृतिक गैस मंत्रालय को, श्री वी.एन.कौल के स्थान पर, 2 अप्रैल, 2002 के पूर्वार्ध से अगले आदेश जारी होने तक, तेल उद्योग विकास बोर्ड का अध्यक्ष नियुक्त करती है।

[फा. सं. जी. 35012/3/92-वित्त-2]
के. पी. के. नम्बीसन, अवर सचिव

New Delhi, the 19th April, 2002

S. O. 1379.— In exercise of the powers conferred by Sub-section (4) of Section 3 of the Oil Industry (Development) Act, 1974 (47 of 1974), the Central Government hereby appoints, with effect from the forenoon of the 2nd April, 2002 and until further orders, Shri B.K. Chaturvedi, Secretary, Ministry of Petroleum and Natural Gas, as the Chairman of the Oil Industry Development Board *vice* Shri V.N. Kaul.

[No. G. 35012/3/92-Fin. II]
K..P. K. NAMBISSAN, Under Secy.

नई दिल्ली, 23 अप्रैल, 2002

का. आ. 1380.— केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि गुजरात राज्य में जामनगर से मध्यप्रदेश राज्य में भोपाल तक पुनः गैसीकृत दूषित प्राकृतिक गैस के परिवहन के लिए गैस ट्रांसपोर्टेशन एंड इन्फ्रास्ट्रक्चर कंपनी लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;

और केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि उस भूमि में, जिसके भीतर उक्त पाइपलाइन बिछाई जाने का प्रस्ताव है और जो इस अधिसूचना से उपाबद्ध अनुसूची में वर्णित है, उपयोग के अधिकार का अर्जन किया जाए ;

अतः, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

कोई व्यक्ति जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको उक्त अधिनियम की धारा 3 की उपधारा (1) के अधीन भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाई जाने के लिए उपयोग के अधिकार के अर्जन के संबंध में श्री एम. सी. रेजा, सक्षम प्राधिकारी, गैस ट्रांसपोर्टेशन एंड इन्फ्रास्ट्रक्चर कम्पनी लिमिटेड, प्लॉट नं०-7, क्वालिटी बिजनेस सेन्टर, एम.पी. नगर, जोन-2, भोपाल को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

तहसील: सीहोर	जिला:सीहोर	राज्य: मध्य प्रदेश	क्षेत्रफल	
गाँव का नाम			आरे	सि-आरे
	सर्वे नंबर	हेक्टर	आरे	सि-आरे
1	2	3	4	5
1.कल्याणपुरा	23/3,128/3	0	07	00
प.ह.नं. 31	129	0	06	00

[फा. सं. एल. 14014/31/01-जी.पी.]

स्वामी सिंह, निदेशक

New Delhi, the 23rd April, 2002

S. O. 1380.— Whereas it appears to the Central Government that it is necessary in the public interest that for the transportation of regassified liquefied natural gas from Jamnagar in the State of Gujarat to Bhopal in the State of Madhya Pradesh, a pipeline should be laid by Gas Transportation and Infrastructure Company Limited;

And whereas it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person, interested in the land described in the said Schedule may within twenty-one days from the date on which the copies of this notification issued under sub-section (1) of section (3) of the said Act, as published in the Gazette of India, are made available to the general public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri M.C. Reja, Competent Authority, GTICL, Plot No.7, Quality Business Center, M.P.Nagar, Zone-II, Bhopal.

SCHEDULE				
Tehsil: Sehore	District: Sehore		State: Madhya Pradesh	
Name of the Village	Survey No	Hectare	Are	C-Are
1	2	3	4	5
1. KALYANPURA	23/3, 128/3	0	07	00
P.C.NO- 31	129/3	0	06	00

[No. L. 14014/31/01-G.P.]
SWAMI SINGH, Director

नई दिल्ली, 23 अप्रैल, 2002

का. आ. 1381.— केन्द्रीय सरकार को लोकहित में यह आवश्यक प्रतीत होता है कि गुजरात राज्य में जामनगर से मध्यप्रदेश राज्य में भोपाल तक पुनः गैसीकृत दूषित प्राकृतिक गैस के परिवहन के लिए गैस ट्रांसपोर्टेशन एंड इन्फ्रास्ट्रक्चर कंपनी लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;

और केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि उस भूमि में, जिसके भीतर उक्त पाइपलाइन बिछाई जाने का प्रस्ताव है और जो इस अधिसूचना से उपाबद्ध अनुसूची में वर्णित है, उपयोग के अधिकार का अर्जन किया जाए ;

अतः, अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

कोई व्यक्ति जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको उक्त अधिनियम की धारा 3 की उपधारा (1) के अधीन भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां साधारण जनता को उपलब्ध करा दी जाती हैं, इक्कीस दिन के भीतर, भूमि के नीचे पाइपलाइन बिछाई जाने के लिए उपयोग के अधिकार के अर्जन के संबंध में श्री एम. सी. रेजा, सक्षम प्राधिकारी, गैस ट्रांसपोर्टेशन एंड इन्फ्रास्ट्रक्चर कम्पनी लिमिटेड, प्लॉट नं०-7, क्वालिटी बिजनेस सेन्टर, एम.पी. नगर, जोन-2, भोपाल को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

तहसील: कालापीपल	जिला:शाजापुर	राज्य: मध्य प्रदेश		
गाँव का नाम	क्षेत्रफल			
	सर्वे नंबर	हेक्टर	आरे	सि-आरे
1	2	3	4	5
1.पोचानेर	3556	0	03	90
प.ह.नं.39/1	3555	0	26	30
	3552	0	33	30
	3553	0	15	30
	3539	0	22	90
	3541	0	05	40
	3546	0	16	50
	3542,3543	0	12	80
	3540	0	04	20
	3506	0	07	40
	3499	0	56	10
	3503	0	31	70
	3466	0	00	90
	3545	0	13	00
	3501	0	32	20
	3502	0	54	40
2.सुकलिया	398	0	33	40
प.ह.नं. 43	399	0	01	00
	400	0	98	80
	504	0	18	70
	524	0	18	90
	521	0	21	70
	520	0	15	00
	512	0	13	50
	395	0	00	08
	514	0	23	40
	531	0	02	00
3.रणायल	1	0	24	70
प.ह.नं. 44	2	0	03	50
	3	0	11	80
	4	0	56	00
	5	0	01	60
	1034	0	01	80
4.हरुखेड़ी	104-105,106,316/1	0	57	12
प.ह.नं. 43	116,117	0	03	04
	315/2-353/1	0	25	65
	315/1	0	28	83
	313-314,332-333,352/1	0	85	09

[illegible]

1	2	3	4	5
गाडरा खेड़ी (निरंतरद्ध)	401	0	00	90
	400	0	09	90
	399	0	11	50
	398	0	07	70
	396	0	25	60
	397	0	02	90
	417	0	09	90
	419/2	0	30	70
	420	0	27	00
	421	0	30	10
	424/2	0	01	40
	422	0	00	80
	423	0	20	40
	438	0	12	90
	440	0	07	70
	441	0	22	20
	571	0	41	40
	572	0	16	80
	570/2	0	27	50
	576	0	11	10
	569	0	38	80
	557	0	52	90
	555	0	15	70
	556	0	25	30
	553	0	42	50
	554	0	08	00
	523	0	03	10
	524	0	33	60
	525	0	13	60
	545/2	0	02	10
	543	0	10	30
	542	0	22	40
	537/2	0	00	20
	540/1	0	62	50
	540/2	0	34	00
	539/1	0	27	20
	538	0	02	10
	371/2	0	17	20
	552	0	17	90
	545/1	0	36	20
	537/5	0	00	20
	367	0	00	20
	369	0	07	60
	368	0	08	40

1	2	3	4	5
6. खमलाय	1039	0	14	80
प.ह.नं. 42	1040	0	05	50
	1023	0	05	00
	1022	0	06	00
	1021	0	03	10
	924	0	30	50
	227	0	01	40
	235	0	01	70
	987	0	68	80
	976	0	23	80
	977	0	33	20
	979	0	15	30
	978	0	05	90
	990	0	33	70
	989	0	34	80
	971	0	02	70
	948	0	54	70
	936	0	14	60
	925	0	61	10
	927	0	16	30
	935	0	13	60
	933	0	00	90
	912	0	22	60
	881	0	07	50
	890	0	45	90
	889	0	26	20
	824	0	29	30
	826	0	20	00
	828	0	06	50
	266	0	15	90
	265	0	23	00
	264	0	21	00
	263	0	53	70
	246	0	00	30
	282	0	48	30
	237	0	28	10
	232	0	25	60
	231	0	24	80
	230	0	13	70
	238	0	24	40
	404	0	07	50
	405	0	09	30
	394	0	00	90
	423/1,423/2,423/3	0	03	00

1	2	3	4	5
खमलाय (निरंतरद्ध)	427	0	13	20
	429	0	03	20
	430	0	28	90
	431	0	10	70
	460	0	34	20
	462	0	34	80
	463	0	34	50
	465	0	00	60
	823	0	02	08
	1020	0	07	08
	229	0	10	00
	459	0	10	00
	464	0	25	00

[फा. सं. एल. 14014/24/02-जी.पी.]

स्वामी सिंह, निदेशक

New Delhi, the 23rd April, 2002

S. O. 1381.— Whereas it appears to the Central Government that it is necessary in the public interest that for the transportation of regassified liquefied natural gas from Jamnagar in the State of Gujarat to Bhopal in the State of Madhya Pradesh, a pipeline should be laid by Gas Transportation and Infrastructure Company Limited;

And whereas it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person, interested in the land described in the said Schedule may within twenty-one days from the date on which the copies of this notification issued under sub-section (1) of section (3) of the said Act, as published in the Gazette of India, are made available to the general public, object in writing to the acquisition of the right of user therein for laying of the pipeline under the land to Shri M.C. Reja, Competent Authority, GTICL, Plot No.7, Quality Business Center, M.P.Nagar, Zone-II, Bhopal.

SCHEDULE

Tehsil: Kalapipal		District: Shajapur State: Madhya Pradesh		
Name of the Village		AREA		
	Survey No	Hectare	Are	C-Are
1	2	3	4	5
1. PAUNCHANER P.C.NO – 39/1	3556	0	03	90
	3555	0	26	30
	3552	0	33	30
	3553	0	15	30
	3539	0	22	90
	3541	0	05	40
	3546	0	16	50
	3542,3543	0	12	80
	3540	0	04	20
	3506	0	07	40
	3499	0	56	10
	3503	0	31	70
	3466	0	00	90
	3545	0	13	00
	3501	0	32	20
	3502	0	54	40
	398	0	33	40
	399	0	01	00
	400	0	98	80
	504	0	18	70
2. SUKLIYA P.C.NO – 43	524	0	18	90
	521	0	21	70
	520	0	15	00
	512	0	13	50
	395	0	00	08
	514	0	23	40
	531	0	02	00
	1	0	24	70
	2	0	03	50
	3	0	11	80
3. RANAYAL P.C.NO – 44	4	0	56	00
	5	0	01	60
	1034	0	01	80
	104-105,106,316/1	0	57	12
	116,117	0	03	04
	315/2-353/1	0	25	65
4. HARUKHEDI P.C.NO – 43	315/1	0	28	83
	313-314,332-333,352/1	0	85	09

1	2	3	4	5
HARUKHEDI (Cont'd)	108/3-111/2,114/1,221, 222,229,230,231,232, 233,307-308,309-311- 312,316/2,370/186, 389/309	0	61	74
	113/1,287-288-290, 289,306/2	0	40	40
	137,148,151/1-175-176, 151/2-152-153,169,170, 171,172,173-177,282, 283,284-285-286	0	50	82
	257/2	0	19	39
	136/1,136/3,136/4,146, 147,149,257/1,369/147, 382/11	1	73	71
	154,155/1,155/2-157- 158-159,156,160,161, 162,163,164,165-166- 167,168,253,254,255, 257/3-258-267-266	0	54	00
	21,24,223,224-225, 226,227,234,235,236, 191/1,198,228	0	36	03
	33/1/1-119/1-120/1, 97,124-125,187/2,195, 191/2,218/1,291, 391/209/2	0	20	79
	8/3,9/2-10/2,12,19/2- 20/2,51/1-52/1-53/1, 57,74/2,220,237	0	24	64
	213/1	0	86	70
	212,216,217,238, 367/238	0	04	23
	150,178,181	0	08	60
5. GADRAKHEDI	341	0	09	50
P.C.NO – 39/2	350	0	07	00
	343	0	04	60
	342	0	60	80
	337	0	10	70
	335/3-336/1-336/2- 338/1,336	0	24	80
	366	0	24	50
	372/1	0		

1	2	3	4	5
GADRAKHEDI (Cont'd)	401	0	00	90
	400	0	09	90
	399	0	11	50
	398	0	07	70
	396	0	25	60
	397	0	02	90
	417	0	09	90
	419/2	0	30	70
	420	0	27	00
	421	0	30	10
	424/2	0	01	40
	422	0	00	80
	423	0	20	40
	438	0	12	90
	440	0	07	70
	441	0	22	20
	571	0	41	40
	572	0	16	80
	570/2	0	27	50
	576	0	11	10
	569	0	38	80
	557	0	52	90
	555	0	15	70
	556	0	25	30
	553	0	42	50
	554	0	08	00
	523	0	03	10
	524	0	33	60
	525	0	13	60
	545/2	0	02	10
	543	0	10	30
	542	0	22	40
	537/2	0	00	20
	540/1	0	62	50
	540/2	0	34	00
	539/1	0	27	20
	538	0	02	10
	371/2	0	17	20
	552	0	17	90
	545/1	0	36	20
	537/5	0	00	20
	367	0	00	20
	369	0	07	60
	368	0	08	40

1	2	3	4	5
6. KHAMLIYA	1039	0	14	80
P.C.NO- 42	1040	0	05	50
	1023	0	05	00
	1022	0	06	00
	1021	0	03	10
	924	0	30	50
	227	0	01	40
	235	0	01	70
	987	0	68	80
	976	0	23	80
	977	0	33	20
	979	0	15	30
	978	0	05	90
	990	0	33	70
	989	0	34	80
	971	0	02	70
	948	0	54	70
	936	0	14	60
	925	0	61	10
	927	0	16	30
	935	0	13	60
	933	0	00	90
	912	0	22	60
	881	0	07	50
	850	0	45	90
	849	0	26	20
	824	0	29	30
	826	0	20	00
	828	0	06	50
	266	0	15	90
	265	0	23	00
	264	0	21	00
	263	0	53	70
	246	0	00	30
	282	0	48	30
	237	0	28	10
	232	0	25	60
	231	0	24	80
	230	0	13	70
	238	0	24	40
	404	0	07	50
	405	0	09	30
	394	0	00	90
	423/1,423/2,423/3	0	03	00

1	2	3	4	5
KHAMLIYA (Cont'd)	427	0	13	20
	429	0	03	20
	430	0	28	90
	431	0	10	70
	460	0	34	20
	462	0	34	80
	463	0	34	50
	465	0	00	60
	823	0	02	08
	1020	0	07	08
	229	0	10	00
	459	0	10	00
	464	0	25	00

[No.L. 14014/24/02-G.P.]
SWAMI SINGH, Director

नई दिल्ली, 24 अप्रैल, 2002

का. आ. 1382.— केन्द्रीय सरकार को लोक हित में यह आवश्यक प्रतीत होता है कि गुजरात राज्य में विरमगाम से हरियाणा राज्य में पानीपत तक, राजस्थान राज्य में चकसू से होती हुई अपरिष्कृत तेल के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा एक पाइपलाइन बिछाई जानी चाहिए ;

और, केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि उस भूमि में जो इस अधिसूचना से संलग्न अनुसूची में वर्णित है और जिसमें पाइपलाइन बिछाए जाने का प्रस्ताव है, उपयोग के अधिकार का अर्जन किया जाए ;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

कोई व्यक्ति जो उक्त अनुसूची में वर्णित भूमि से हितबद्ध है उस तारीख से जिसको उक्त अधिनियम की धारा 3 की उपधारा (1) के अधीन जारी भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रति साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाने के संबंध में श्री जे. के. आहूजा, सक्षम प्राधिकारी, सलाया-मथुरा पाइपलाइन (संवर्द्धन) परियोजना, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, कोठी नं. 1439, सेक्टर-15, अरबन इस्टेट, सोनीपत-131001 (हरियाणा) को लिखित रूप में आक्षेप भेज सकेगा।

ताहसील: इमरान		तहसील: पानीपत		तहसील: हरियाणा		
गाँव का नाम	हदबस्त संख्या	मुख्यतः संख्या	खसरा/किला संख्या	नैचरेयर	एयर	तर्गमाटर
1	2	3	4	5	6	7
शाहपुर	89		114	0	00	51
			125	0	02	02
			140/1	0	00	51
			142/2	0	00	51
इसरागा	66-67	168	13	0	00	25
			302	0	00	51
			304	0	00	51
			907	0	00	51
कारद	64	91	22/1	0	00	25
			22/2	0	02	78
			131	0	01	26
			140	0	01	77

[फा. सं. आर. 25011/14/2001/ओ.आर. I]

एस. एस. केमवाल. अवर सचिव

New Delhi, the 24th April, 2002

S. O. 1382.—Whereas, it appears to the Central Government, that it is necessary in the public interest that for the transportation of crude oil from Viramgam in the State of Gujarat to Panipat in the State of Haryana via Chaksu in the State of Rajasthan, a pipeline should be laid by the Indian Oil Corporation Limited;

And, whereas, it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

Any person interested in the land described in the said Schedule may, within twenty-one days from the date on which copies of the notification issued under sub-section 1 of section 3 of the said Act, as published in the Gazette of India, are made available to the general public, object in writing to the laying of the pipeline under the land to Shri J.K. Ahuja, Competent Authority, Salaya-Mathura Pipeline (Augmentation) Project, Indian Oil Corporation Ltd., Kothi No. 1439 Sector-15, Urban Estate, Sonapat (Haryana)-131001.

Tehsil: Israna		Dist: Panipat		State: Haryana		
Name of Village	Hadbast No.	Mustatil No	Khasra/ Killa No	Area		
				Hectare.	Are	Sq. Mtr
1	2	3	4	5	6	7
Shahpur	89		114	0	00	51
			125	0	02	02
			140/1	0	00	51
			142/2	0	00	51
Ishrana	66-67	168	13	0	00	25
			302	0	00	51
			304	0	00	51
			907	0	00	51
Karad	64	91	22/1	0	00	25
			22/2	0	02	78
			131	0	01	26
			140	0	01	77

[No. R. 25011/14/2001/OR I]
S.S. KEMWAL, Under Secy.

नई दिल्ली, 24 अप्रैल, 2002

क का.आ. 1383.— केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइप लाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962) (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का. आ. 1536, तारीख 3 जुलाई, 2001 में निम्नलिखित संशोधन करती है, अर्थात् :-

उक्त अधिसूचना की अनुसूची के पृष्ठ 3156 पर गाँव "शाहपुर" के सामने, खसरा / किला सं. "344" में क्षेत्रफल "0.00.51" के स्थान पर क्षेत्रफल "0.00.76" रखा जाएगा।

[फा. सं. आर. 25011/14/2001/ओ.आर. I]
[स.स. केमवाल, अवर सचिव]

New Delhi, the 24th April. 2002

S. O. 1383.—In exercise of the powers conferred by sub-section (1) of Section 3 of the Petroleum and Minerals Pipeline (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O. 1536, dated ^{the} 3rd July, 2001 namely:-

In the said notification in the Schedule, at page 3163, against village "Shahpur", in khasra / Killa No. "344" for the area "0-00-51", the area "0-00-76" shall be substituted

[No. R. 25011/14/2001/OR I]
S. S. KEMWAL, Under Secy

नई दिल्ली, 24 अप्रैल, 2002

का. आ. 1384.— केन्द्रीय सरकार को लोक हित में यह आवश्यक प्रतीत होता है कि गुजरात राज्य में विरमगाम से हरियाणा राज्य में पानीपत तक, राजस्थान राज्य में चाकसू से होती हुई अपरिष्कृत तेल के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा पाइपलाइन बिछाई जानी चाहिए ;

और, केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि उस भूमि में जिसमें पाइपलाइन बिछाए जाने का प्रस्ताव है और जो इस अधिसूचना से संलग्न अनुसूची में वर्णित है उपयोग के अधिकार का अर्जन किया जाए ;

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

कोई व्यक्ति जो उक्त अनुसूची में वर्णित भूमि से हितबद्ध है उस तारीख से जिसको, भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर उस भूमि में उपयोग के अधिकार का अर्जन करने या भूमि के नीचे पाइपलाइन बिछाने के संबंध में श्री जे. के. आहूजा, सक्षम प्राधिकारी, सलाया-मथुरा पाइपलाइन (संवर्द्धन) परियोजना, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, कोठी नं. 1439, सेक्टर-15, अरबन इस्टेट, सोनीपत-131001 (हरियाणा) को लिखित रूप में आक्षेप भेज सकेगा।

तहसील पानीपत		जि. मा. सोनीपत		श. ज. हरियाणा		
गांव का नाम	हदबस्त संख्या	मुस्ततिल संख्या	खसरा/केला संख्या	क्षेत्रफल		
1	2	3	4	हेक्टेयर	एयर	वर्गमीटर
कालसा	41	18	17	0	03	29
		59	2/3/2	0	00	51
		78	6/1	0	00	00
			155	0	00	76
			159	0	01	77
			103	0	03	04
			742/2	0	01	77
			261/2	0	00	51
ओहरी	42		169	0	03	54
			792	0	00	51
अन्तली	44	32	16/3	0	05	82
			25/2	0	00	25
			277/3	0	00	51
			307/3	0	00	51
आमन खुर्द	22	10	5/1/1	0	00	00
		17	14	0	00	51
			132	0	00	51

[फा. सं. आर. 25011/16/2001/ओ.आर. I]

एस. एस. केमवाल, अवर सचिव

New Delhi, the 24th April, 2002

S. O. 1384.—Whereas, it appears to the Central Government, that it is necessary in the public interest that for the transportation of crude oil from Viramgam in the State of Gujarat to Panipat in the State of Haryana via Chaksu in the State of Rajasthan, a pipeline should be laid by the Indian Oil Corporation Limited ;

And, whereas, it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land under which the said pipeline is proposed to be laid and which is described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein;

Any person interested in the land described in the said Schedule may, within twenty one days from the date on which the copies of this notification, as published in the Gazette of India, are made available to the general public, object in writing to the acquisition of the right of user therein or laying of the pipeline under the land to Shri J.K. Ahuja, Competent Authority, Salaya-Mathura Pipeline (Augmentation) Project, Indian Oil Corporation Ltd., Kothi No. 1439 , Sector-15, Urban Estate , Sonapat (Haryana) – 131001.

Tehsil: Panipat		Dist: Panipat		State: Haryana		
Name of Village	Hadbast No.	Mustatil No	Khasra/ Killa No	Area		
				Hectare.	Are	Sq.Mtr
1	2	3	4	5	6	7
Kalkha	41	18	17	0	03	29
		59	2/3/2	0	00	51
		78	6/1	0	00	00
			155	0	00	76
			159	0	01	77
			162	0	03	04
			242/2	0	01	77
			261/2	0	00	51
Lohari	42		169	0	03	34
			192	0	00	51
Untalo	44	22	10/	0	05	82
			2/2	0	00	25
			4	0	00	51
			30/2	0	00	51
Asan Khurad	22	10	5/1/1	0	00	00
		17	14	0	00	51
			132	0	01	51

[No R 25011/16/2001/ORI]
S S KEMWAL Under Secy

नई दिल्ली, 24 अप्रैल, 2002

का. आ. 1385.— केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का. आ. 1622 तारीख 9 जुलाई, 2001 में निम्नलिखित संशोधन करने का निर्देश देती है, अर्थात् :-

उक्त अधिसूचना में गाँव “लोहारी” से संबंधित पृष्ठ 3328 पर :-

खसरा / किला सं. 744 के सामने क्षेत्र “0.03.29” के स्थान पर क्षेत्र “0.04.05” रखा जाएगा।

[फा. सं आर 25011/16/2001/ओ.आर I]
एस एस केमवाल, अवर सचिव

New Delhi, the 24th April 2002

S. O. 1385.— In exercise of the powers conferred by the Sub-section (1) of the Section 3 of the Petroleum and Minerals Pipeline (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby makes the following amendments in the notification of the Government of India in the Ministry of Petroleum and Natural Gas vide S.O. 1622 dated 9th July, 2001 Namely :-

In the said notification at page 3336 relating to village Lohari : -

Against Khasra / Killa No. 744 for the area " 0-03-29", the area " 0-04-05" shall be substituted.

[No R 25011/16/2001/OR I]
S S KEMWAL, Under Secy

नई दिल्ली, 24 अप्रैल, 2002

का. आ. 1386.— केन्द्रीय सरकार को लोक हित में यह आवश्यक प्रतीत होता है कि गुजरात राज्य में विरमगाम से हरियाणा राज्य में पानीपत तक, राजस्थान राज्य में चाकसू से होती हुई अपरिष्कृत तेल के परिवहन के लिए इंडियन ऑयल कॉर्पोरेशन लिमिटेड द्वारा “ सलाया-मथुरा पाइपलाइन प्रणाली के विरमगाम-चाकसू, चाकसू-पानीपत व चाकसू-मथूरा सेक्शनों के संवर्द्धन” के कार्यान्वयन हेतु एक पाइपलाइन बिछाई जानी चाहिए;

और, केन्द्रीय सरकार को उक्त पाइपलाइन बिछाने के प्रयोजन के लिए यह आवश्यक प्रतीत होता है कि उस भूमि में जो इस अधिसूचना से मंलग्न अनुसूची में वर्णित है उपयोग के अधिकार का अर्जन किया जाए ,

अतः अब, केन्द्रीय सरकार, पेट्रोलियम और खनिज पाइपलाइन (भूमि में उपयोग के अधिकार का अर्जन) अधिनियम, 1962 (1962 का 50) की धारा 3 की उपधारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, उस भूमि में उपयोग के अधिकार का अर्जन करने के अपने आशय की घोषणा करती है ;

कोई व्यक्ति जो उक्त अनुसूची में वर्णित भूमि में हितबद्ध है, उस तारीख से जिसको, धारा 3 की उपधारा (1) के अधीन भारत के राजपत्र में यथा प्रकाशित इस अधिसूचना की प्रतियां साधारण जनता को उपलब्ध करा दी जाती है, इक्कीस दिन के भीतर भूमि के नीचे पाइपलाइन बिछाने के संबंध में श्री आर. एम. पंड्या, सक्षम प्राधिकारी, इंडियन ऑयल कॉर्पोरेशन लिमिटेड, (पाइपलाइन प्रभाग) पो. बा. सं. 4, पोस्ट, विरमगाम, जिला अहमदाबाद, गुजरात-382150 को लिखित रूप में आक्षेप भेज सकेगा।

अनुसूची

तालूका : वडगाव		जिला : बनासकांठ		राज्य : गुजरात		
गाँव का नाम	सर्वे सं.	उप-खण्ड सं.	क्षेत्रफल			
			हेक्टर	एयर	वर्ग मीटर	
1	2	3	4	5	6	
छापी	250	2	0	06	64	
मजादर	247	1	0	12	10	
	234	1	0	02	94	
	328	2	0	06	02	

[फा. सं. आर. 25011/21/2001/ओ.आर. I]

एस. एस. केमवाल, अवर सचिव,

New Delhi, the 24th April, 2002

S. O. 1386.—Whereas, it appears to the Central Government that it is necessary in the public interest that for the transportation of petroleum (crude oil) from Viramgam in the State of Gujarat to Panipat in the State of Haryana via Chaksu in the State of Rajasthan, a pipeline should be laid by the Indian Oil Corporation Limited for implementing the "Augmentation of Viramgam-Chaksu, Chaksu-Panipat and Chaksu-Mathura sections of Salaya-Mathura pipeline System";

And, whereas, it appears to the Central Government that for the purpose of laying the said pipeline, it is necessary to acquire the right of user in the land described in the Schedule annexed to this notification;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 3 of the Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (50 of 1962), the Central Government hereby declares its intention to acquire the right of user therein.

Any person interested in the land described in the said Schedule may, within twenty one days from the date on which the copies of the notification issued under sub-sector-1 of Section 3 of the said Act, as published in the Gazette of India, are made available to the general public, object in writing to the laying of the pipeline under the land to Shri R.M. Pandya, Competent Authority, Indian Oil Corporation Limited, (Pipelines Division), P.B.No.4, P.O. Viramgam, Distt. Ahmedabad, Gujarat-382150.

SCHEDULE

Taluka : VADGAM		District : BANASKANTHA		State : GUJARAT	
Name of the Village	Survey no.	Sub-Division no.	Area		
			Hectare	Are	Sq.mtr.
1	2	3	4	5	6
CHHAPI	250	2	0	06	64
MAJADAR	247	1	0	12	10
	234	1	0	02	94
	328	2	0	06	02

[No. R. 25011/21/2001/OR I]
S.S. KEMWAL, Under Secy.

नई दिल्ली, 24 अप्रैल, 2002

शुद्धिपत्र

क का. आ. 1387.— भारत के राजपत्र, भाग-11, खण्ड 3, उपखण्ड (ii), तारीख 18 अगस्त, 2001 में पृष्ठ 4219 से 4261 तक पर प्रकाशित भारत सरकार के पेट्रोलियम और प्राकृतिक गैस मंत्रालय की अधिसूचना सं. का. आ 2070 तारीख 9 अगस्त, 2001 की अनुसूची में,

“पृष्ठ संख्या 4235 : खानपुरकलां गाँव के कॉलम 7 क्षेत्रफल के वर्गमीटर के अन्तर्गत लाईन 22 में 5 के स्थान पर 05 पढ़ें”

“पृष्ठ संख्या 4237 : शामड़ी सीसान गाँव के कॉलम 2 हदबस्त संख्या के अन्तर्गत 54 के स्थान पर 55 पढ़ें”

[फा. सं. आर. 25011/26/2001/ओ.आर. I]

एस. एस. केमवाल, अवर सचिव

New Delhi, the 24th April, 2002

Corrigendum

S. O. 1387.—In the notification of the Government of India in the Ministry of Petroleum and Natural Gas number S.O. 2070 Dated the 9th August, 2001 Published at pages 4219 to 4261 in Part II, section 3, sub-section (ii) of the Gazette of India, dated the 18th August, 2001, in the schedule, -

- (i) " at page 4242, in village Giwana, in column 4, under Khasra / Killa No, in line 40 for ' 2/2' read ' 612 / 2' and in line 41 for '015' read "615".
- (ii) " at page 4258, in village Shamri Seesan, in column 2, in line 15, for '54' read "55"

[No. R. 25011/26/2001/OR I]
S.S. KEMWAL, Under Secy

श्रम मंत्रालय

नई दिल्ली, 1 अप्रैल, 2002

का. आ. 1388.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक आफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, बंगलौर के पंचाट (संदर्भ संख्या C R No 17/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-04-2002 को प्राप्त हुआ था।

[सं. एल-12012/85/98-आई. आर. (बी-1)]

अजय कुमार, डैस्क अधिकारी

MINISTRY OF LABOUR

New Delhi, the 1st April, 2002

S.O. 1388.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref No C R No 17/99) of the Central Government Industrial Tribunal-Cum-Labour Court Bangalore as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 01-04-2002

[No L-12012/85/98-IR (B I)]

AJAY KUMAR Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT BANGALORE**

Dated, the 7th March, 2002

PRESENTHON'BLE SHRI VN KULKARNI B Com LLB
Presiding Officer

CGIT-CUM-LABOUR COURT, BANGALORE

C R No 17/99

I PARTYShri M. Kannabiran,
S/o Shri Muniswamy,
Door No 21,
Veelmurugapuram,
Dr T C M Ravan Road,
Bangalore-53
Advocate Dr V Bhat**II PARTY**The Regional Manager
State Bank of India,
St Marks Road,
Bangalore-560001
Advocate
C N Eswar Prasad**AWARD**

I The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No 12012/85/98/IR(B-I) dated 9th February, 1999 for adjudication on the following schedule

SCHEDULE

“Whether the contention of the workman Shri M. Kannabiran that the action of the management of State Bank of India in refusing employment to him amounts to violation of Section 25(F) 25(G), and

25(H) of the I D Act, 1947 and the same amounts to retrenchment under section 2(00) of the said Act, is legal and justified ? If so, to what relief the said workman is entitled ?”

2 The 1st Party was working with the 2nd Party. The management refused work to the workman therefore, Industrial Dispute is raised

3 Parties appeared and filed Claim Statement and Counter respectively

4 The case of the 1st Party in brief is as under

5 The 1st Party workman comes from a very poor family. He was studied upto 9th Standard. He got himself enrolled with the local employment exchange and received interview call from the 2nd Party on 13-3-1982 and he appeared for an interview and he was selected as Messenger with the 2nd Party and reported duty on 25-3-1982. He continuously worked in 1982 as stated in para 2 and also in 1985 as stated in Para 3 of the Claim Statement

6 It is the further case of the workman that the management has not selected the workman to the post of Messenger and has not regularised his services which is arbitrarily and illegal. He was again appointed as Messenger w e f 19-7-1994 and worked up to 27th March, 1996 continuously and thereafter without any reason the 1st Party workman was kept out of employment he was not provided with any work by the 2nd Party management. He was appointed and selected by a regularly appointed selection Committee to the post of Messenger. He has worked continuously from 19-7-1994 to 27th March, 1996. He has worked for 240 days in each of the calendar year. He has completed one year of service under Section 25(B) of the Industrial Disputes Act. The management before terminating the services of the first party has not complied the mandatory provisions of Section 25 F. The said provisions were grossly violated by the management. The workman for these reasons and for some other reasons has prayed to pass award in his favour. It is also said that there is unfair labour practice and victimization

7 The case of the 2nd Party management in brief is as under

8 It is true that the workman worked for 91 days on temporary basis. He was asked to work in leave vacancy. The first party was never appointed for any permanent post. It is denied that the services were terminated

9 It is further case of the management that the workman was taken on temporary basis and such appointment is governed by the Bipartite Settlement dated 17-11-1987. He cannot be regularised. The 1st Party was called for an interview wherein the interview Board found him to be unsuitable. He did not satisfy with the requirements of the Board and hence his candidature was not accepted. The workman has not worked for 240 days within a period of 12 calendar months as claimed by the 1st Party. In order to fill up the existing vacancies in the subordinate cadre interviews were conducted for temporary employees who had completed 30 days of temporary service in 12 months or 70 days in 36 months between 1-7-75 and 31-7-1988 and successful candidates were absorbed and appointed in the existing vacancies. The services of the first party has not required at all. He has never been retrenched and therefore, the provisions of Section 25 F does not arise at all. There is no unfair labour

practice Management for these reasons and for some other reasons has prayed to reject the reference

10 In the instant case, 2nd Party examined MW1 and MW2. Against this workman got examined himself as WW1. MW2 has given evidence that the workman was working as Temporary Messenger on daily wages. He was paid daily wages on the day for which he has worked. Whenever permanent messenger goes on leave the service of the first party were engaged. In the branch the 1st Party has not worked 240 days continuously.

11 MW2 has stated that in his evidence that 1st Party was engaged as messenger on temporary basis whenever permanent staff went on leave. He has worked in the year 1995 for 140 days and no more. The workman has not informed that he has worked in different branches. MW2 in his cross examination has stated that he does not know if the first party was continuously worked for more than 240 days in any other branches.

12 MW2 has no courage to answer the suggestion correctly and on the other hand he has told he does not know the first party has continuously worked for more than 240 days in any other branches. All this would go to show that definitely according to the material before us the workman has worked for more than 240 days.

13 We have the evidence of WW1. He has stated that he has interviewed on 13-3-1982 and reported duty on 25-3-1982. He has given detailed evidence in support of this claim. He has also given evidence about his working in each year. He says that he was terminated without any fault of him. No termination notice was given. He further said that persons who joined subsequent to him were retained and he was removed. He is cross examined but nothing is elicited from his cross examination so as to disbelieve his evidence.

14 After the close of the evidence, I have heard the arguments of both sides in detail. I have considered the citations given by the learned counsel for the 1st Party workman. The workman has filed some certificated and appointment order. It was argued by the learned counsel appearing for the workman that according to the certificate dated 9th February, 1995 Branch Manager, Senegorav anahalli Branch, has certified that, the 1st Party workman has worked as temporary Sweeper Cum Waterboy from 19-7-1994 to 31-1-1995. According to the certificate dated 28th January, 1995 he continued to work again and has worked 10 days in April, 1995, 31 days in May, 1995, 30 days in June, 1995 and 31 days in July, 1995. According to the certificate dated 9th May, 1996 he again worked with the Bank. He also has worked from 2-11-95 to 28-11-95 and 12-12-95 to 22-12-95. He has worked from 29-5-96 to 6-6-96. There is no reason to discard these certificate at all.

15 It was vehemently argued by the learned counsel appearing for the workman that on the decision reported in 1983 (1) LLJ Page 30 that the workman has continuously worked for more than 240 days in a calendar year and he has also worked for more than 240 days preceding the date of refusal of work.

16 I have read the above decision very carefully. It was argued by the learned counsel appearing for the 2nd Party that there is interruption between 31st January, 1995 and April, 1995, and therefore, the workman has not worked continuously for 240 days in any year.

17 Against this it was argued by the learned counsel for the workman that there is interruption but it was on account of cessation of work and not on account of any fault on the part of the workman and therefore, the management has to comply the provisions of Section 25 F and refusal of work amounts to retrenchment and the workman may be regularised.

18 I have read the decision of the Hon'ble Supreme Court of India carefully. It is held in the above decision that Section 25B(1) provides a deeming fiction in that where a workman is in service for a certain period, he shall be deemed to be in continuous service for that period even if service is interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal or a lock out or a cessation of work which is not due to any fault on the part of the workman.

19 It is further held that sub-section (2) incorporates another fiction whereby a workman shall be deemed to be in continuous service under an employer for a period of one year or six months, as the case may be of the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made, has actually worked for not less than 240 days and Sub-section (2) specifically comprehends a situation where a workman is not in continuous service as per the deeming fiction indicated in sub-section (1).

20 It is further held that in such case he is deemed to be in continuous service for a period of one year if he satisfies the conditions in clause (a) of sub-section (2).

21 Keeping in mind the principles held in the above decision of the Hon'ble Supreme Court of India, I am of the opinion that the facts of the present case on hand are similar and the management has not explained anything about the 2 certificates given by the competent authorities referred earlier.

22 Admittedly in the instant case no compensation is paid. No enquiry is held or no notice of termination is given.

23 The learned counsel appearing for the workman has also relied the decision reported in 1983 (1) LLJ Page 30.

24 I have read the above decision very carefully. There is merit in the arguments advanced by the learned counsel appearing for the 1st Party that the workman has worked for 240 days in the year immediately preceding the date of discharge. It is held in the decision reported in 1983(1) LLJ Page 30 that before effecting retrenchment of a workman who has completed one or more years of continuous service in terms of Section 25 F(1) of the Act, one month's notice is necessary and according to Section 25 F(b) payment of compensation at the rate of 15 days wages for every completed year of service is mandatory. It may be in a given case, if the workman had not worked for a period of 240 days immediately prior to the date of discharge, or during any other year, it is a matter relevant for consideration for the computation of the amount payable under Section 25(F)(b) of the Act. He might not be entitled to 15 days salary for such year. That does not mean that if for some reason or the other a workman had not worked for 240 days in the year preceding the date of termination, his past service by the force of which he would be entitled to the notice and payment prescribed in S 25 F (a) and (b) of the Act would be wiped out.

25 Keeping in mind the principles held in the above decision, I am of the opinion that the facts of the case on hand are similar. I have read the decisions reported in 1970(3) SCC page 67, 1985(4) SCC page 201 and 198 (2) in LLJ Page 73 carefully.

26 In the instant case I have already said that the learned counsel appearing for the management could not explain the certificates dated 9th February 1995 and 28th January 1995. The evidence of MW1 & MW2 will not help the second party.

27 I have given my best consideration to the evidence and the material before me and I am of the opinion that in the instant case the management can regularize the services of the workman. Accordingly I proceed to pass the following Order.

ORDER

The referenced is partly allowed and the management is directed to regularize the services of the workman if he fulfills the necessary conditions. No other benefits are awarded.

(Dictated to PA transcribed by her corrected and signed by me on 7th March 2002)

V N KULKARNI, Presiding Officer

नई दिल्ली, 1 अप्रैल, 2002

का. आ. 1389.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नार्दन रेलवे, चेन्नई के प्रबंधन के सदस्य नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कम-लेबर कार्ट, चेन्नई के पचाट (सदस्य संख्या आई डी.नं 50/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-04-2002 का प्राप्त हुआ था।

[स एल-41012/32/2000-आई आर (बी-1)]

नजय कुमार, डेस्क अधिकारी

New Delhi the 1st April, 2002

S.O. 1389.—In pursuance of Section 17 of the Industrial Dispute Act 1947 (14 of 1947) the Central Government hereby publishes the award (Ref No ID No 50/2000) of the Central Government Industrial Tribunal-Cum-Labour Court Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Southern Railway Chennai and their workman which was received by the Central Government on 01-04-2002.

[No 1-41012/32/2000-IR (B-1)]

AJAY KUMAR Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT CHENNAI

Wednesday the 20th March 2002

Present K. Karthikeyan
Presiding Officer

INDUSTRIAL DISPUTE NO 50/2000

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10

of the Industrial Disputes Act, 1947 (14 of 1947) between Sri S. Selvam and the Management of Southern Railway, Chennai.)

BETWEEN

Sri S. Selvam I Party/Workman

AND

The Senior Divisional Medical Officer, Southern Railway, Chennai. II Party/Management

APPEARANCE

For the workman M/s R. Vaigai & Anna Mathew, S. Karolin Geetha, Advocates

For the Management Sri G. Kalyanasundaram, Addl. CGSC

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No. L-41012/32/2000/IR(B-1) dated 07/11-08-2000.

On receipt of the order of reference from the Government of India, Ministry of Labour, the case has been taken on file as I.D. No. 50/2000 and notices were sent to both the parties to the dispute, with a direction to appear before this Tribunal on 12-09-2000 to prosecute this case further. Accordingly, both the parties appeared along with their respective counsels and prosecuted this case by filing their Claim Statement and Counter Statement respectively and by marking their respective documents.

When the matter came up before me for final hearing on 25-02-2002, upon perusing the Claim Statement, Counter Statement, the other material papers on record, the oral and documentary evidence let in on either side and after hearing the arguments advanced by the learned counsel on either side, this matter having stood over till this date for consideration, this Tribunal has passed the following —

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows —

“Whether the action of the Medical Director, Railway Hospital, Perambur, Chennai-23 in terminating the services of the workman Sri S. Selvam with effect from 10-10-96 is justified? If not to what relief is he entitled?”

2. The averments in the Claim Statement filed of the I Party/Workman Sri S. Selvam (hereinafter refers to as Petitioner) are briefly as follows —

The Petitioner was employed as Bungalow Lascar to Dr. Mrs. Bagvarathi Annamalai, Senior Divisional Medical Officer, Railway Hospital, Perambur. He joined service on

25-4-91 and as per the terms of appointment, he was eligible for regular appointment as Bungalow Peon in the scale Rs. 750-940 after one year of continuous service. He discharged his duties without any complaints for two and half years. He fell ill and had to stay away from work from 11-12-93. He was issued with a charge sheet dated 5-1-94 on the charge that he was unauthorisedly absent from 11-12-93 onwards. A domestic enquiry was held. It was opposed to the principles of natural justice. The Petitioner participated in the domestic enquiry in which the Petitioner was asked a few questions by the Enquiry Officer regarding absence and the enquiry was closed. The Petitioner was unwell and therefore, he could not attend the work but produced a medical certificate on 24-2-94 to that effect that he was under Siddha treatment and was fit to join duty from 25-2-94. Thereafter, by an order dated 28-2-94 the Petitioner was removed from service with effect from 1-3-94. His appeal and revision were rejected and therefore, he approached the Central Administrative Tribunal, Madras by way of original application challenging the removal from service. The Tribunal allowed the Petitioner's case and quashed the order of removal dated 28-2-94. The Tribunal remanded the case back to the Disciplinary Authority to be decided afresh. The Tribunal allowed the case on the ground that the Disciplinary Authority had taken into account the Petitioner's absence beyond the period 5-1-94, which was the date on which the charge memo was issued. The Tribunal also found that the Revisional Authority had taken into account the unauthorised absence for an earlier period in 1993 for which he had already suffered a minor punishment. In compliance with the order of the Tribunal, the Respondent passed an order dated 12-9-96 placing the Petitioner under deemed suspension w.e.f. 1-3-94 and paid his subsistence allowance of Rs. 36,084/- Thereafter, by an order dated 02-10-96, the Disciplinary Authority once again imposed a penalty of removal from service on the ground that the Petitioner was unauthorisedly absent from 11-12-93 to 05-01-94. This order was passed on the basis of the same defective domestic enquiry held earlier and the Petitioner was not given reasonable opportunity to explain his defence and prove himself innocent of the charges. The Petitioner sent an appeal dated 11-11-96 against the order dated 02-10-96 removing him from service. However, by an order dated 10-02-97, the Petitioner's appeal was rejected and the order of removal was confirmed. In these circumstances, the Petitioner raised an industrial dispute on 12-11-99 and the Respondent filed their remarks on 04-12-99. The Petitioner filed his rejoinder on 6-1-2000. Since the Regional Labour Commissioner could not bring about any settlement between the parties, he sent his failure report on 23-02-2000. Thereafter, the reference was made on 11-8-2000. The petitioner has not been given a reasonable opportunity to defend himself for the alleged unauthorised absence between 11-12-93 and 05-01-94. The domestic enquiry that was held in this regard is totally opposed to the basic principles of natural justice. None of the documents referred to in the charge sheet dated 5-1-94 were served on the Petitioner either before the enquiry or during the enquiry proceedings. The Petitioner was never informed that he could have the assistance of a defence helper. He was not paid subsistence allowance during enquiry proceedings. The Petitioner was also not served with the proceedings of the domestic enquiry. He did not have a reasonable opportunity to cross-examine the witness since he was not conversant with the conduct of a domestic enquiry. In these circumstances, the order passed by the Respondent for

removing the Petitioner from service on the basis of the domestic enquiry is not fair and just. This action of punishing the Petitioner without giving him a proper opportunity to defend himself is also unfair and unjust. The punishment of removal from service is extremely harsh and highly disproportionate. The Petitioner has worked for two and half years and even as per the appointment order, he is eligible for regular absorption as Bungalow Peon after one year of continuous service, subject to availability of vacancy etc. Because of this harsh punishment, he has been deprived absorption. Many of his juniors have been absorbed after his termination. It is, therefore, just and necessary that this Hon'ble Tribunal exercises its powers under Section 11A of the Industrial Disputes Act, 1947 and interfere with the punishment of removal from service. It is, therefore, prayed that this Hon'ble Tribunal may be pleased to hold that the non-employment of the Petitioner w.e.f. 10-10-96 is unjustified and direct the Respondent to reinstate the Petitioner in service with back wages, continuity of service and all other attendant benefits.

3 The averments in the Counter Statement of the II Party/Management, the Senior Divisional Medical Officer, Railway Hospital, Southern Railway, Perambur (hereinafter refers to as Respondent) are briefly as following —

The petition is not maintainable either in law or on facts. The post of Bungalow Lascar (peon) is the post to do domestic service/work in the residence of the officer. It is the post of choice of the officer on whose recommendation, the candidate will be appointed and not governed by normal recruitment rules. The Petitioner was engaged in the residence of Dr. Mrs. Bagyarathi Annamalai, Senior Divisional Medical Officer, Railway Hospital, Southern Railway. The service in the post is purely temporary in nature and at any time within one year of service from the date of appointment, the Petitioner is liable to be discharged from duty without assigning any reason or notice. The Section 2(1) of the Industrial Disputes Act, (Amended Act) define the 'Industry' under which domestic services are not covered. Therefore, the Petitioner cannot invoke the provisions of Industrial Disputes Act. The Petitioner is not a workman as defined in Section 2(S) of the Industrial Disputes Act, and cannot invoke the provisions of Industrial Disputes Act. The post of Bungalow Lascar is to do only domestic work in the residence of the officer. Since the domestic services are not included under Section 2(i) of the Industrial Disputes Act, the Petitioner would not come under the purview of Section 2(s) of the Industrial Disputes Act. Therefore, the petition is liable to be dismissed in limine. The Principle Bench of Central Administrative Tribunal has observed that Bungalow Peon/Khalasis were not Railway employees and their service being purely contractual in nature, could be terminated at any time in terms of their contract, so long as they did not acquire temporary status. Therefore, the Petitioner is not a railway employee. The services of the petitioner are temporary in nature and as he has no right over the post, his services are liable to be terminated. The Petitioner acquires temporary status on completion of such a period of continuous service as may be prescribed by the General Manager of the Railway under which he works and which is current on the date of his employment as a Bungalow Peon. After acquisition of temporary status by a Bungalow Peon, his service can be terminated on the ground of unsatisfactory work without holding departmental enquiry. The termination of the service of a substitute Bungalow

Peon who has acquired temporary status is no bad or illegal for want of notice before termination. In such case, he may be entitled to pay for the period of notice, in lieu of notice. In the above said circumstances, the Petitioner is not entitled for any benefit, as prayed, since the Petitioner is not a railway servant and his service can be terminated on the ground of unsatisfactory work without holding departmental enquiry. The Petitioner was given appointment under the clear instructions that his services are liable for termination, if found unsatisfactory or in the case of an officer not requiring his service or the officer getting transferred outside the Railway etc. The Petitioner, while working as a Bungalow Lascar has absented himself unauthorisedly from 11-12-93 onwards and thus, violated Rule 3(ii) of Railway Service (Conduct) Rules, 1966. The charge memorandum was sent to the last known address of the employee by registered Post with acknowledgement due card and the same was received by the Petitioner. After receiving the charge memorandum, the Petitioner fails to make representation within the stipulated time. Therefore, Divisional Medical Officer, Railway Hospital, Perambur, Chennai, was appointed as Enquiry Officer. Since the Petitioner failed to give explanation and also not come forward to peruse the document, the enquiry was conducted, on the Petitioner attending the enquiry on 11-2-94, by following the principles of natural justice. During the enquiry, the Petitioner admitted the charges and received the charge memorandum dated 5-1-94. Further, he has not filed any proof to show that he was suffering from jaundice during the enquiry. The Enquiry Officer held the charges as proved. A copy the enquiry report and the findings was sent to the Petitioner by RPAD, which was received by the Petitioner on 17-2-94. After receiving the enquiry report and the findings, the petitioner submitted a representation dated 24-2-94 along with a private medical certificate issued by Dr. K. Sundaramurthy, Siddha Doctor. Based on the findings of the enquiry, the Disciplinary Authority imposed the penalty of removal from service w.e.f. 1-3-94 by an advice dated 28-2-94. The Petitioner preferred an appeal dated 10-3-94 to the Medical Director, Railway Hospital, Perambur, who after considering the case carefully, confirmed the penalty. This was communicated to the Petitioner by an advice dated 18-3-94. The revision submitted by the Petitioner to the General Manager was confirmed by the General Manager and communicated to the Petitioner by an advice dated 19-10-94. The Petitioner filed an O.A. No. 48/95 in the Central Administrative Tribunal. The Tribunal in its order dated 2-4-96, quashed the penalty order on the ground that the Disciplinary Authority while imposing the penalty traversed the charges. The penalty order of removal from service from 1-3-94 was cancelled and fresh speaking order was passed treating the period from 1-3-94 as deemed suspension upto 10-10-96. The Petitioner was paid subsistence allowance of Rs. 36,084/-. Further, the Tribunal in its order stated that the Revisional Authority i.e. General Manager had also caused prejudice to the applicant by his order on the revision petition by taking into account the unauthorised absence of an earlier period from 1-6-93 to 2-7-93 for which the appellant was imposed a minor penalty earlier. the matter has been remanded to the Disciplinary authority to decide the matter without taking into account the period of unauthorised absence of the Petitioner from 5-1-94. Fresh penalty order was issued removing the Petitioner from service w.e.f. 10-10-96. The Petitioner preferred an appeal dated 10-03-94 to the Medical Director, Railway Hospital, who confirmed the penalty of removal. In terms of para

1502(1) of Indian Railway Establishment Manual Vol. I which reads as 'when a person without a lieu on a permanent post under Govt. is appointed to hold a temporary post or to officiate in a permanent post, he is entitled to no notice of termination of his service.' The Railway Board or the General Manager of Railways could make rules or issue instructions from time to time for appointment of substitute on such terms and conditions as decided by them. The meaning of 'substitute' given in para 1512 of India Railway Establishment Manual states as the purpose of their employment would appear to be that of making stop gap arrangement. Ordinarily persons employed on stop gap arrangement are not entitled to any such right or privilege as recognised by the Railway Board in para 1515 of the Manual. The para 1515 of the Manual is applicable only to Casual Labour attaining temporary status. Hence, the para 1515 is not applicable in this case. The Hon'ble Tribunal has observed that the Govt. has powers and jurisdiction to terminate simplicitor, the service of a temporary Govt. servant. The Petitioner is not a regular employee. His nature of employment is domestic in nature besides purely temporary in nature. At any time within one year of service from the date of engagement, without assigning and reason or notice, the Petitioner is liable to be discharged from duty. The petitioner has not raised any protest against the Enquiry Officer or the procedure adopted by the Enquiry Officer. Since the Petitioner admitted the charges, there is no question of cross examination of further evidence and there ends the matter. The enquiry was conducted by following the principles of natural justice. The principles of natural justice depends upon the facts and circumstances of each particular case. Rules of natural justice are flexible and cannot put on any rigid formulation. In the present case, the Petitioner was given reasonable opportunity, which is covered by D & A Rules. In the case of a probationer or a temporary employee, who has no right to the post, the termination of his service is valid and does not attract the provisions of Article 311 of the Constitution. If an employee under probation is found unsuitable for being confirmed in service, no opportunity of hearing is necessary before termination of his service. Therefore, the removal of the Petitioner is justified. Department enquiry is not necessary in case of admission of misconduct by employee. Even if, any enquiry is made, despite admission, punishment imposed cannot be set aside on any defects in the conduct of enquiry. Therefore, the removal of the Petitioner is justified. The Petitioner has not acquired temporary status merely because he had put continuous service. The termination of service of the substitute Bungalow Peon, who has acquired temporary status is not bad or illegal for want of notice before termination. In such case, he may be entitled to pay for the period of notice in lieu of notice. Therefore, the discharge from service of the Petitioner is justified and the Petitioner is not entitled to any relief under Industrial Disputes Act. The petition is totally misconceived and devoid of merits. Under such circumstances, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the petition with cost.

4. When the matter was taken up for enquiry, one witness on each side has been examined as WWI and MWI respectively. Three documents on the side of the Petitioner and 18 documents on the side of the Respondent were marked as Ex. W1 to W3 and M1 to M18 respectively. The learned counsel on either side have advanced their arguments.

5. The point for my consideration is-

"Whether the action of the Medical Director, Railway, Hospital, Perambur, Chennai-23, in terminating the services of the workman Shri S. Selvam with effect from 10-10-96 is justified? If not, to what relief is he entitled?"

Point :-

When the Petitioner has been examined as WW 1, he deposed in Tamil. As the Court language happens to be English, his evidence given in Tamil has been translated to English and was recorded. While recording his evidence in English as such, the counsel for the Petitioner, who was examining the witness WW 1 in Chief, has objected to the method of translation of the evidence given by WW 1 in English, stating that the evidence given by WW 1 in Tamil has not been properly translated in English for recording of his evidence in English. So, the learned counsel for the Petitioner was directed to translate the evidence of WW 1 in English for the Court to record the same. Since she had declined, it was recorded so, and WW 1 was directed to file his proof of affidavit to treat the same as his evidence in Chief. Accordingly, WW 1 filed his proof of affidavit and he has been taken as his evidence in chief and his earlier evidence recorded in chief in part has been eschewed. Then the learned counsel for the Respondent/Management has cross examined WW 1.

6. It is admitted that the Petitioner Sri Selvam, was employed as a Lascar at the Bungalow of Dr. Mrs. Bagyarathi Annamalai, Senior Divisional Medical Officer of Railway Hospital, Southern Railway. Ex. M1 is the xerox copy of the order of appointment dated 24-4-1991 given to the Petitioner as an office order by the Senior Personnel Officer (Engineering) of Headquarters Office of Personnel Branch of Southern Railway, Madras. The Petitioner was attending the work of sweeping, cleaning and other household work in the Bungalow of Senior Divisional Medical Officer, Railway Hospital. He joined duty on 24-4-1991. A charge memo was issued to the Petitioner dated 5-1-94. The xerox copy of the same is Ex. M2. In that charge memo it is stated that the Petitioner while working as a Bungalow Lascar has been absent himself unauthorisedly from 11-12-93 onwards. The report of Dr. Mrs. Bagyarathi Annamalai has been mentioned in annexure II to Ex. M2, as a document by which the article of charge framed against the Petitioner proposed to be sustained. The xerox copy of the report of Dr. Mrs. Bagyarathi Annamalai dated 22-12-93 has been filed as an annexure to Ex. M2. It is admitted that an enquiry was conducted in pursuance of the charge memo Ex. M1 issued to the Petitioner and in that enquiry conducted by Dr. Prasannakumar as Enquiry Officer, the petitioner as charge sheeted employee has given evidence and the same has been recorded. The Petitioner has not engaged anybody to assist him in the enquiry. Ex. M3 is the xerox copy of the proceedings of the Enquiry Officer Dr. Prasannakumar. It contains the signature of the Petitioner Selvam along with the signature of the Enquiry Officer. It is the allegation of the Petitioner in his proof of affidavit that he fell ill and had to stay away from work from 11-12-93 and he informed Dr. Mrs. Bagyarathi Annamalai about his ill health and left for his house. It is also his evidence that since he was advised by his people at home to take Siddha treatment for jaundice, he did not take treatment in Railway Hospital or with Dr. Mrs. Bagyarathi Annamalai and that his brother had informed Dr. Mrs. Bagyarathi Annamalai about his

illness and she came to his house twice to visit him and that he recovered completely from his illness after three months and when he went to Bungalow for work, he was refused work. It is also his evidence that in the meanwhile, he was issued with charge sheet dated 5-1-94 mentioning that he was absent unauthorisedly from 11-12-93 onwards and in the domestic enquiry one Inspector and Dr. Prasannakumar were present and that only four questions were put to him and his answers were obtained and that the entire proceedings in the enquiry was conducted in English. He would further deposed that since Dr. Prasannakumar does not know Tamil, the Inspector was translating his answers to him, which was recorded in English and no witness was examined on behalf of the Railways. In the cross examination, though WW 1 has stated that he does not know whether Dr. Mrs. Bagyarathi Annamalai has written on 22-12-93 about his unauthorised absence, he has admitted that along with the charge sheet, he was given the copy of the letter sent by Dr. Mrs. Bagyarathi Annamalai and it is Ex. M2. In the Claim Statement filed by the Petitioner, it is alleged that in the domestic enquiry the Petitioner and the Enquiry Officer alone were present. But while giving evidence, he has developed his version by saying that, one Inspector also was present and he was translating his answers to the Enquiry officer to record the same in English. But he has not stated so in his Claim Statement. The Petitioner has further alleged in his proof of affidavit that he did not engage anybody to assist in the enquiry because he was not aware that he can avail the services of an assistant to help him in the enquiry and he was also not informed that he was entitled to the services of such an assistant. In the cross examination, WW 1 has deposed that he was not asked in the enquiry as to what was his ailment and so he did not tell anything about his ailment in the enquiry. He denied the suggestion that he was put a question with regard to his sickness and also denied the suggestion that he accepted the charge in the enquiry on 11-2-94. A perusal of Ex. M3 proceedings would show that in the enquiry conducted by the Divisional Medical Officer, Railway Hospital, Perambur as Enquiry Officer, the Petitioner as a charge sheeted employee has admitted that he received the copy of the charge memorandum dated 5-1-94 and he understood the charges framed against him and when a question was put to him, as what he felt about the charges framed against him, he answered that he agrees the same. Further, for another question in respect of his absence for all these days, he answered that since he was sick, he could not come for duty and that he was not aware of reporting of sick at Railway Hospital and for his previous absence, no enquiry was conducted but he was issued with a warning letter. It is also his evidence before the Enquiry Officer that since he was sick, he could not attend his duties regularly. In the letter of Dr. Mrs. Bagyarathi Annamalai dated 22-12-93, she has mentioned that this is the second time he is on long unauthorised absence. She had reported in that letter that the Petitioner is absenting himself unauthorisedly from 11-12-93 till that date. In the charge memorandum, it is clearly stated that the subsistence of imputation of misconduct in respect of which the enquiry is proposed to be held is set out in the enclosed statement of articles of charges Annexure I. In the list of documents by which the articles of charges are proposed to be sustained enclosed in Annexure III and IV and copies of documents mentioned in list of documents as per annexure III were enclosed. It is further stated that the Petitioner is informed that if he so desires, he can inspect and take extract from

the documents mentioned in Annexure III and that if he so desires take the assistance of any other railway servant and official of Railway Trade Union for inspecting the documents and assisting him in presenting his case before the enquiry authority in the event of an oral enquiry being held and he was directed to submit his written statement of defence within ten days of the receipt of that memorandum etc. It is the admission of the Petitioner as WW 1 as he had mentioned in the domestic enquiry that he has received the charge memorandum dated 5-1-94 and understood the same. It is not his evidence that before the Enquiry Officer himself or any time prior to the domestic enquiry to any higher official has informed that he intends to have an assistance for defending him in the enquiry. He has not raised any objection before the Enquiry Officer that he was unable to understand the questions put to him by the Enquiry Officer and hence, he is unable to answer any question. On the other hand, the proceedings under Ex M3 recorded by the Enquiry Officer clearly proves that the charge sheeted employee, the Petitioner who had signed the enquiry proceedings in English as understood the entire proceedings and has given his answer as recorded therein by the Enquiry Officer. Ex M4 is the xerox copy of the report of the Enquiry Officer dated 11-2-94, wherein he has clearly stated that the Petitioner has not submitted his explanation for the charge memo and in the enquiry the delinquent has stated that he did not attend duty, since he was sick and he has not reported to Railway Doctor for placing him on sick list, since he was not aware of that procedure. He has also stated in his report that the charge framed against the employee has been proved. The copy of his report has been forwarded to the Petitioner under Registered post and he xerox copy of the postal acknowledgement for the same is Ex M5. Ex M6 is the xerox copy of the letter dated 24-2-94 sent by the Petitioner to Senior Divisional Medical Officer and Ex M7 is the xerox copy of the medical certificate issued by one Doctor. It was sent as an enclosure to Ex M6 letter. In Ex M6 letter sent by the Petitioner on 24-2-94, ten days subsequent to the domestic enquiry, he has not whispered that he was not aware what was recorded in the domestic enquiry since it was recorded in English and he has not admitted the charges before the Enquiry Officer. Though he has stated in Ex M6 that he was suffering from jaundice from 11-12-93 to 24-2-94 for 76 days and took treatment from Siddha Doctor, he has not stated so before the Enquiry Officer on 11-2-94, when he was questioned about the reason for his absence for duty, and has simply stated that since, he was sick, he could not come for duty. That Ex M6 letter the Petitioner has submitted belatedly as his explanation for the charge sheet dated 5-1-94. Ex M8 is the penalty advice dated 28-2-94 passed by the Senior Divisional Medical Officer of Railway Hospital by imposing the penalty of removal of the Petitioner from service from 1-3-94. Ex M9 is the xerox copy of the appeal given by the Petitioner to the Medical Director dated 10-3-94. In that appeal also, he has not stated that in the domestic enquiry he has informed about his suffering from jaundice from 11-12-93. In that appeal also, he has not stated that he was not put in notice of his right to engage an assistant to defend himself in the domestic enquiry and he was not furnished with the list of witness or the list of documents mentioned in the charge sheet. From all the stages, it is seen that he has raised such objections in the Claim Statement only as an afterthought. Ex M10 is the xerox copy of the order dated 18-3-94 passed by the Medical Director rejecting the appeal of the Petitioner. Ex M12 is the xerox copy of the order

dated 19-10-94 passed by the Assistant Personnel Officer, Headquarters Office, Personnel Branch, Madras on the revision petition of the Petitioner dated 28-4-94 and 22-7-94. In that order, the penalty of removal from service imposed against the Petitioner has been confirmed. It is the admission of the Petitioner as WW1 in cross examination, that he gave the medical certificate only when he preferred an appeal and that he was given a fresh penalty advice dated 2-10-96. The xerox copy of the same is Ex M13 and he was given a termination order dated 10-10-96. The xerox copy of the same is Ex M17 denied the suggestion that he had admitted the charge in the earlier enquiry. From all these available materials, including the evidence of WW 1, it is seen that the Petitioner has absented for duty unauthorisedly from 11-12-93 and after taking due disciplinary action against him by conducting the domestic enquiry, the Respondent has passed the penalty order, which was subsequently confirmed by the Appellate Authority in the appeal and the Revisional Authority in the revision. While preferring the appeal also to the Medical Director, Railway Hospital, Perambur, the Petitioner has not raised any plea in respect of the alleged irregularity regarding the enquiry proceedings. It is not his evidence that in his revision petition he has mentioned any irregularities about the enquiry proceedings. Further, when he has been examined as WW1 also he has not chosen to examine anybody other than himself to establish his contention that he remained unauthorisedly absent only due to his sufferings from jaundice. If really, he was suffered from jaundice, he could have stated so in the enquiry proceedings and could have submitted acceptable evidence for the same. Further, the medical certificate said to have been issued by Siddha Doctor under the original of Ex M7 also has not been proved by the Petitioner at least before this Tribunal by let in any supportive acceptable evidence. As contended by the Petitioner that he has informed about his sickness to Dr Mrs Bagyarathi Annamalai, as a Doctor she would have given proper treatment or proper medical advice for availing proper medical treatment. If really the Petitioner had absented for duty due to his illness, after duly informing the same to Dr Mrs Bagyarathi Annamalai, she would not have reported about his unauthorised absence from 11-12-93 by her letter referred to in the charge memo. Under such circumstances, the contention of the Petitioner that he was absented for work as he was suffering from jaundice cannot be accepted as true. In the absence of any acceptable evidence for proving the medical certificate Ex M7, it can be concluded that it has been obtained by the Petitioner only to defend his stand taken belatedly as a supportive evidence. Further, as it is seen from enquiry proceedings the Petitioner has admitted that of his unauthorised absence for duty. So there was no necessity for examining any witness on the side of the management to prove the charge. From the available records and evidence, it is seen that on earlier occasion also, the Petitioner absented himself unauthorisedly for a long time, the Petitioner has also admitted the same in his evidence. While signing the enquiry proceedings also, the Petitioner has not raised any objection or raised any irregularities about the enquiry proceedings in the appeal or his signature has been obtained under compulsion. So, it cannot be said that the enquiry was not conducted in a proper manner. The Petitioner has chosen to raise those objections in respect of the domestic enquiry only as an afterthought. From the perusal of the records inclusive of the enquiry proceedings and the report of the Enquiry

Officer, it is seen that a fair and proper enquiry was conducted by giving sufficient opportunity to the Petitioner as charge sheeted employee to put forth his defence effectively. The Petitioner having taken part in the enquiry proceedings has subscribed his signature in token of his accepting the correctness of the same, since he has admitted the charge of unauthorised absence, there is no necessity for the management to let in further evidence to prove the charge levelled against the Petitioner. So under such circumstances, it can be easily concluded that the plea raised by the Petitioner in respect of the conduct of the enquiry as unfair and improper without following the principles of natural justice, cannot be accepted as correct. A faint belated attempt made by the Petitioner to justify his unauthorised absence by production of a medical certificate issued by the Siddha Doctor for the alleged treatment said to have taken for his alleged ailment of jaundice has not been established with acceptable evidence. From this, it is seen he has attempted so, only to justify his absence for duty unauthorisedly for the second time. Hence, it cannot be said that the Enquiry Officer has given a perverse finding in his report to come to the conclusion that the charges levelled against the Petitioner has been proved in the domestic enquiry.

7 The learned counsel for the Respondent had argued that the Central Administrative Tribunal, Principal Bench, Madras has observed in a similar case that *'the Bungalow Peon/Khalasis were not railway employees as their services being purely contractual in nature could be terminated at any time in terms of their contract, so long as they did not acquire temporary status and hence the petitioner is not a railway employee and the service of the Petitioner is in temporary nature and as a temporary employee having not acquired temporary status, he has no right over the post'*. In the referred decision of the Principal Bench of Central Administrative Tribunal the question of whether Bungalow Peon in Railways is a railway employee or not and whether their services are purely contractual and they can be discharged in terms of the contract has not been decided, since the counsel on either side appeared in that case before the Principal Bench have conceded that Bungalow Peon/Khalasis were not railway employees and their services being purely contractual in nature and could be terminated at any time in terms of contract. So, the observation made by the Principal Bench of Central Administrative Tribunal cannot be made applicable to this case, as it is contended by the learned counsel for the Petitioner. In the appointment order Ex. M1 issued by Senior Personnel officer of southern Railway, Headquarters office, Personnel Branch, it is stated that only after proper medical certification for fitness, the Petitioner was appointed as a substitute Bungalow Lascar for the post of Bungalow Lascar to Senior Divisional Medical Officer, Dr Mrs Bagyarathi Annamalai w.e.f 25-4-1991. So from this it is evident that the appointment has been made by Southern Railway competent authority and not by Senior Divisional Medical Officer, Dr Mrs Bagyarathi Annamalai, who sponsored the name of the Petitioner for that post. Neither the appointment order nor the order of termination from the service under Ex. M17 has been issued by Senior Divisional Medical Officer, Dr Mrs Bagyarathi Annamalai. Further, the very fact that the respondent has relied upon Ex. M14 to M16 the terms and conditions applicable to railway servants and substitutes in temporary service mentioned in Chapter XV of Indian Railway Establishment Manual Vol I go to show that the Petitioner has been considered and treated as temporary

railway servant. Further, in Ex. M2 charge sheet it is clearly stated at the top that it is the standard from the charge sheet as per rule 9 of Railway Service (D&A) Rules, 1968. In that charge memo itself, it is stated in very many words to conclude that the Petitioner as a charge sheeted employee has been taken as a temporary railway servant. Under such circumstances, it is incorrect to contend that the Petitioner is not a workman under Southern Railway, but only an employee appointed at the choice and recommendation of Senior Divisional Medical Officer, Railway Hospital, Southern Railway as Bungalow Lascar to do the domestic work in the bungalow. It is not case of the Petitioner that he has been absorbed as a permanent employee of the Southern Railway or he has been granted temporary status by the competent authority on his satisfactory completion of the prescribed period for the same. In Ex. M1 appointment order, it is stated only about the Petitioner's eligibility for regular absorption as Bungalow Peon. It is not the contention of the Petitioner himself that considering his eligibility for regular absorption he has been absorbed by the Southern Railway management or the Post of Bungalow Peon. So under such circumstances, it can be held that he was working till the date of retrenchment from the service as a temporary workman without acquiring of temporary status as a Bungalow Peon. Further by a proper enquiry conducted for the charges framed against the Petitioner for his unauthorised absence, it was found by the Enquiry Officer that the Petitioner was guilty of the charges levelled against him and the same was accepted by Disciplinary Authority, Appellate Authority as well as Revisional Authority. Further, the Petitioner has no lien over the post as he was not absorbed by the southern Railway Management as a permanent workman. The termination of service of the Petitioner as a Bungalow Lascar is not bad or illegal for want of notice before termination. The Petitioner acquires temporary status on completion of such a period of continuous service as may be prescribed by the General Manager of Railways under which he works and which is current on the date of his employment as Bungalow Lascar. Even if, he deemed to have acquired temporary service by virtue of his continuous service, the action taken by the Respondent/Management in terminating his services cannot be said to be bad or illegal for want of notice. From the materials available in this case, it is evident that he has been removed from service by the Respondent/Management after proper enquiry conducted about his alleged misconduct. Further, as per the orders passed by the Central Administrative Tribunal in O.A. No. 48/95 dated 2-4-96 by quashing the penalty order dated 1-3-94 for removing the Petitioner from service that order was cancelled and fresh order for removal from service has been passed by the Disciplinary Authority dated 10-10-96. The period from 1-3-94 to 10-10-96 have been treated as a deemed suspension period and a subsistence allowance of Rs. 36,084 has been paid to petitioner. This has not been denied by the Petitioner. Taking all these things into consideration, it can be concluded that the action of the Respondent/Management in terminating the services of the Petitioner Sri S. Selvam w.e.f 10-10-96 is justified and the concerned workman is not entitled to any relief. Thus, the point is answered accordingly.

8 In the result, an Award is passed holding that the action of the II Party/Respondent/Management in terminating the service of the Petitioner Sri S. Selvam w.e.f 10-10-96 is justified. The concerned workman is not entitled to any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him corrected and pronounced by me in the open court on this day the 28th March, 2002)

K KARTHIKEYAN, Presiding Officer

Witnesses Examined

For the I Party/Workman WWI Shri S Selvam

For the II Party/
Management MWI Shri M Sekaran

DOCUMENTS MARKED

For the I Party/Workman

Ex No	Date	Description
W 1	12 11 99	Xerox copy of the letter of the Petitioner to Regional Labour Commissioner (Central)
W 2	04 12 99	Xerox copy of the reply of Respondent to Assistant Labour Commissioner (Central)
W 3	06 1 2000	Xerox copy of the rejoinder of the Petitioner filed before Assistant Labour Commissioner

For the II Party/Management -

Ex No	Date	Description
M 1	24 04 91	Xerox copy of the appointment order issued by the Respondent to Petitioner
M 2	05 01 94	Xerox copy of the chargesheet issued to the Petitioner by Respondent/Management
M 3	11 02 94	Xerox copy of the enquiry proceedings
M 4	11 02 94	Xerox copy of the findings/report of Enquiry Officer
M 5	17 02 94	Xerox copy of the acknowledgement due card for the receipt of letter by Petitioner
M 6	24 02 94	Xerox copy of the representation of the Petitioner to Senior DMO
M 7	24 02 94	Xerox copy of the medical certificate issued by Dr K Sundaramurthy
M 8	28 02 94	Xerox copy of the penalty advice
M 9	10 3 94	Xerox copy of the appeal made by the Petitioner to the Medical Director

M 10 18 3 94

Xerox copy of the disposal of appeal by the Medical Director against the appeal of Petitioner

M 11 24 3 94

Xerox copy of the acknowledgement due card For the receipt of letter by Petitioner

M 12 19 10 94

Xerox copy of the disposal of revision petition by General Manager

M 13 2 10 96

Xerox copy of the fresh penalty advice issued to Petitioner

M 14 Nil

Xerox copy of the para 1502 (I) of IREM Vol I

M 15 Nil

Xerox copy of the para 1512 (I) of IREM Vol I

M 16 Nil

Xerox copy of the para 1515 (I) of IREM Vol I

M 17 10 10 96

Xerox copy of the termination order issued to the Petitioner by the Chief Personnel Officer

M 18 Dec 1993 to March, 1994

Xerox copies of the attendance register

नई दिल्ली, 2 अप्रैल, 2002

का.आ. 1390.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, चंडीगढ़ के पंचाट (संदर्भ संख्या आई डी 30 ऑफ 1991) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-04-2002 को प्राप्त हुआ था।

[सं. एल-12012/235/90-आई आर-(बी-1)]
अजय कुमार, डैस्क अधिकारी

New Delhi, the 2nd April, 2002

S.O. 1390.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref No. I.D. 30 of 1991) of the Central Government Industrial Tribunal/Labour Court Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of State Bank of India and their workmen, which was received by the Central Government on 01-04-2002

[No L-12012/235/90-IR(B-1)]
AJAY KUMAR, Desk Officer

ANNEXURE**BEFORE SHRIS.M. GOEL, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHANDIGARH**

Case No I D 30 of 1991

General Secretary
State Bank of India Staff Congress
745, Sector 22,
Chandigarh-160022

Vs

Petitioner

Regional Manager,
State Bank of India
Regional-III, Regional Office (Pb)
S C O 103-110, Sector 17-B,
Chandigarh-160017

Respondent

REPRESENTATIVES:

For the Workman None
For the Management Sh V K Sharma

AWARD

(Passed on 5th march 2002)

The Central Govt Ministry of Labour, vide Notification No L-12012/235/90 I R (B-3), dated 28th February 1991 has referred the following dispute to this Tribunal for adjudication

"Whether the action of the management of the State Bank of India, Region-III Chandigarh, was justified in reverting Shri Manorath Singh, Cashier in the Phillaur Branch, to the subordinate cadre w e f 2-4-1988 ? If not, to what relief the workman is entitled to ?"

2 In claim statement the applicant stated that he joined the bank in subordinate cadre on 1-9-1978 and at that time he was middle standard pass. He passed the matriculation examination from Central Board of High/Higher education New Delhi in 1981. He submitted the original certificate to add his qualification for the purpose of promotion and other benefits. After recording the date and after due scrutiny he was allowed to write the test for promotion to clerical cadres. He passed the test and was promoted as clerk on 1-4-1984. The respondent after four years served a notice that Board from which the applicant passed matriculation is not recognised by the Govt of India and thus reverted him to the subordinate post w e f 2-4-1988. It is pleaded that no charge sheet or enquiry was conducted against the workman. It is further averred that reversion from higher to lower cadre is a major penalty and can not be imposed without observing the basic principles of natural justice. Thus the workman prayed that the respondent be directed to restore the clerical cadre with retrospective effect, with full backwages and other benefits.

3 In written statement the management has stated that the applicant passed the matric examination from Central Board of High/Higher education New Delhi being run by the individuals. The applicant was promoted as cashier w e f 1984 on the basis of passing the test. The workman was issued show cause notice dated 22nd February 1988 and the workman was reverted w e f

2-4-1988 as he was not eligible for promotion and his promotion is *void-ab-initio*. The respondent prayed for the rejection of the reference.

4. In evidence the workman submitted his affidavit Ex W1. In rebuttal the management produced Shri A.K. Kanwar MW1 and Shri V K Gupta filed his affidavit Ex M1 and he appeared for cross-examination as MW 2.

5 I have heard the representative of the parties and gone through the record of the case.

6 The claim of the applicant is that he had given the certificate to the respondent and the respondent after verifying the same promoted to the next cadre but after about four years he was reverted to subordinate cadre in the year 1988 without any charge sheet or notice. He has gained sufficient experience on the post during this period and the action of the management in reverting him is unjustified and he has also referred me to the case of Shri Jaswant Singh Vs State Bank of India in I.D. 210/89 decided on 18-4-1994 by this Tribunal whereby this Tribunal has held that reverting the petitioner from the post of cashier to messenger is illegal. The rep. of the management has argued that the applicant had given the fake certificate and on the basis of which he was allowed to sit in the test and was promoted also. When this fact was detected, after show cause notice the applicant was reverted back to his original post. The bank has rectified its mistake and it does not involve any penalty. The rep. of the management has drawn my attention to the judgement of Hon'ble Andhra Pradesh High Court in the case of K. Krishna Sherigati Versus The Syndicate Bank and another reported in 1984(1) S L J 50 in which the Hon'ble High Court has held that when the action taken is only on the ground of irregularities of promotion and not on the ground of punishment that the petitioner is guilty of any in subordination or misconduct Article 311 does not apply.

7 The rep. of the workman has also replied on the judgement Baldev Singh Versus State of Punjab and others reported in 1993 (2) S L R 695 and the judgement of Hon'ble Supreme Court in the case of Bhagwati Parshad Vs Delhi State Mineral Development Corporation AIR 1990 Supreme Court page 371 wherein it has been held by the Hon'ble Supreme Court and the High Court that non-regularisation of the petitioners on the ground that the qualification obtained by them was not from a recognised institution is wrong and they had gained experience so they be regularised. It has also been held that practical experience would always add the person to effectively discharge the duties and is a sure guide to assess the suitability. Thus, following the law laid down by the Hon'ble Supreme Court I am of the considered opinion that workman in the case in hand had gained the requisite experience while working as cashier for four years and he should not have been reverted to the post of subordinate cadre. In view of the above, the action of the management of the State Bank of India, Region-III, Chandigarh, was not justified in reverting the applicant w e f 2-4-1988. The applicant is entitled to be retained as cashier w e f 2-4-1988. The reference is answered. Central Govt be informed.

Chandigarh

5-3-2002

S M GOEL, Presiding Officer

नई दिल्ली, 2 अप्रैल, 2002

का.आ. 1391.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नोर्दन रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, चंडीगढ़ के पंचाट (संदर्भ संख्या आई डी. 306/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-04-2002 को प्राप्त हुआ था।

[सं. एल-41012/48/2001-आई आर(बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 2nd April, 2002

S.O. 1391.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref No I D 306/2001) of the Central Government Industrial Tribunal-cum-Labour Court Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management Northern Railway and their workmen, which was received by the Central Government on 01-04-2002

[No L-41012/48/2001-IR(B-1)]
AJAY KUMAR, Desk Officer**ANNEXURE****BEFORE SHRIS.M. GOEL, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHANDIGARH**

Case No I D 306/2001

Smt Amarjeet Kaur C/o H No 3369, Sector 32-D,
Chandigarh-160017

Petitioner

Versus

The Medical Superintendent, Northern Railway Hospital,
Jagadhari Workshop, Distt Yamunanagar (Hry)

Respondent

APPEARANCES

For the Workman None

For the Management None

AWARD

(Passed on 21-2-2002)

The Central Govt vide notification No L-41012/48/2001-IR(B-1), dated 16-10-2001 has referred the following dispute to this Tribunal for adjudication

“Whether the action of the management of Indian Railway in terminating the service of Smt Amarjeet Kaur LHA w e f 16-9-1999 is justified ? If not, what relief the workman is entitled ?”

2 None appeared on behalf of the workman despite notice It appears that workman is not interested to pursue with the present reference In view of the above, the present reference is returned to the Central Govt accordingly

Ministry be informed

Chandigarh

21-2-2002

S M GOEL, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1392.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, लखनऊ के पंचाट (संदर्भ संख्या आई डी-9/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-04-2002 को प्राप्त हुआ था।

[सं. एल-12012/369/2000-आई. आर.(बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 3rd April, 2002

S.O. 1392.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref No I D 9/2001) of the Central Government Industrial Tribunal-cum-Labour Court Lucknow as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management State Bank of India and their workmen, which was received by the Central Government on 02-04-2002

[No L-12012/369/2000-IR(B-1)]
AJAY KUMAR, Desk Officer**ANNEXURE****CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT, LUCKNOW****PRESENT:**

Rudresh Kumar, Presiding Officer

I D No 9/2001

Ref No 12012/369/2000-IR(B-1) dated 11-1-2001

Between

Smt Urmila Devi, C/o Shri Bhupendra Nath Singh, 198,
Lukerganj, Allahabad-211001

And

The Dy General Manager, State Bank of India
Zonal Office, Varanasi (U P) 221001**AWARD**

By order No L-12012/369/2000-IR(B-1) dated 11-1-2001, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub section (1) and section 2 (A) of I D Act, 1947 (14 of 1947) referred this industrial dispute between the Smt Urmila Devi and the Dy General Manager, State Bank of India, Varanasi for adjudication

The reference under adjudication is as under

“Whether the action of the management of State Bank of India, in terminating the services of Smt Urmila Devi w e f 27-4-95 is justified ? If not, to what relief the workman is entitled for ?”

2 According to workman, namely Smt Urmila Devi, she was appointed as part time sweeper w e f 23-9-89 and was working at branch office Kadipur (Manjhan Pur) Distt Kaushambi, Allahabad. The nature of post was permanent. Though she worked with full devotion on the said post ever since her appointment till 26-4-95, but her services were illegally and arbitrarily terminated by oral order w e f 27-4-95. At the time of termination, she was not given one month notice, salary in lieu thereof or any other pecuniary benefits as envisaged under section 25-F and 25-H of the I D Act, 1947. The workman, from time to time, contacted the authorities seeking regularisation of her appointment and she was assured to be appointed on regular basis on approval of the higher authorities. Her services were dispensed with without any justified reasons and one S C Pandey was posted at her place, as part time sweeper. She has sought relief in the nature of direction to management of the State Bank of India to reinstate her and also to pay back wages at par with regular part-time sweeper.

3 The management has not denied her engagement and working at the Kadipur branch of the State Bank of India, which was established for the first time in the month of Sept 1989 and the post of part-time sweeper was sanctioned. However, the posting of the workman as casual sweeper was a time gap arrangement, till such time a regular selection by prescribed procedures made by the bank. S C Pandey was appointed as part-time sweeper on 1/3rd of wages on 27-4-95 and he is working on the said post. It is denied by the management that Smt Urmila Devi had worked for 240 days in any 12 calendar months. Further more, it is denied that the provisions of section 25-F and 25-H of the I D Act, were contravened by the management in dispensing with the services of Urmila Devi.

4 The management had also taken pleas that this industrial dispute is time barred and further, there is misjoinder of parties.

5 Both the parties relied on oral evidence filed in shape of affidavits. The workman relied on a certificate Ex W-1, issued by the Branch Manager of Kadipur Branch, certifying rate of wages Rs 5/-, 10/- and 15/- per day and also working days of 269, 274, 278 and 238 days in the year 1991, 92, 93 and 1994 respectively. She has also filed a copy of her application bearing endorsement dated 6-8-91 and also 2 other representation seeking regularisation.

6 The plea of maintainability of the claim, on its having been filed after 5 years is not sound and liable to be rejected. Law of limitation is not applicable in industrial dispute matters. Further more, the poor lady believed more in persuasions which consumed considerable time. The principle of laches can not be applied in generality and has to be seen in context of each case. In the present case there appears nothing to disentitle the workmen in preferring her claim before appropriate authority under the Industrial Dispute Act, 5

years after her termination. Likewise, there is no merit in the argument that there existed misjoinder of the parties. State Bank of India has been arranged as employer to speak through its Dy General Manager who, supposedly, is head of department. This issue goes against the management.

7 Coming to the merit of the case, it is expedient to scrutinise the case on two main issues, i.e. status of the workman and further rate of payments made to her during her association with the State Bank of India, Kadipur Branch.

8 The workman's case is that, initially, she was paid Rs 3/- which later were revised to Rs 5/- 10/- and 15/- per day. Further more, she has alleged non-payment of notice pay or retrenchment compensation etc. Her averments remained un rebutted. Her continuity of working since 1989 is admitted by the management since 1991. The management witness Ram Prakash Misra, Manager, Kadipur branch, has admitted in his cross examination that according to available records, Smt Urmila Devi had worked continuously since 1991 till 27-4-95. He also stated that no one else was engaged for sweeping work during the aforesaid period. He has further admitted her removal w e f 27-4-95 as regular part time sweeper. S C Pandey was appointed there. He was confronted with certificate Ex W-1 which shows working days of Smt Urmila Devi. According to this certificate issued by the branch manager, she had worked continuously for 269 in 1991, 274 days in 1992, 278 in 1993 and 238 days in 1994. The management witness admitted that the facts given in this document are correct but branch manager was not authorised to issue such certificate and so Ex W-1 is not legal. He, however, has admitted that notice pay or retrenchment compensation etc were not paid to the workman at the time of termination of her services.

9 Thus, according to undenied facts and admission of management's witness, it is fully proved that Smt Urmila Devi was discharging duties of part-time sweeper, at the bank since its establishment and none except her worked there till 27-4-95. The certificate Ex W-1 is proved by the workman. The management witness also admitted that contents of Ex W-1 are correct as per records of the bank. No doubt, monthwise working days are not specified but in view of the admitted facts by the management witness in his cross examination, it can be safely concluded that the workman had worked for than 240 days in each year of her association with the bank. The learned A/R of the management pointed out that the workman stated that during her non-availability the cleaning and sweeping work were done by 'Gudiya' and 'Ranjeet', her family members. On the basis of this statement he tries to draw inference that the working periods were not continuous. This plea is misconceived. Gudiya and Ranjeet were deputed by her to ensure cleaning and sweeping work. The bank manager did not engage them. She was paid by the bank and none else. Thus, the continuity of her tenure stands fully proved.

10 The bank treated her a daily wagger and allowed her to work for more than 240 days since 1991 as admitted and proved by the workman. In these circumstances she is entitled to benefits of section 25-F I D Act. The management, admittedly, did not comply with the said provision hence termination of her

services w.e.f 27-4-95 was not justified and is illegal. She is entitled to reinstatement as part-time sweeper with back wages

11. However, while granting relief of reinstatement, subsequent development that the post is filled up by the regular appointee since 27-4-95, is also to be taken into consideration. Reinstatement as part-time sweeper is not possible at Kadipur branch unless the management shifts S.C.Pande or adjust her at some other branch. So, in the facts and circumstances of the case, it appears expedient to compensate the lady workman by lump sum pecuniary grant.

12. There was a post of part-time sweeper and admittedly the workman discharged duties of the post satisfactorily for years. The management committed unfair labour practices by not paying wages for two-hours daily or 1/3 of the pay as was given to her successor, but kept her paying meagre sum of Rs 3/- revised to Rs. 5/- 10/- and 15/- only. This action of the management was in violation of recognised norms as provided in para (10) of the Vth Schedule of the I D Act.

13. The workman should have been paid at par with the regularly appointed part time sweepers as she was doing equal work. Though this is not an issue to be adjudicated as per reference order but is very relevant and should be taken into consideration while granting lump sum compensation. Taking her legitimate back wages, retrenchment compensation and notice pay etc into consideration and also her entitlement to the post, a lump sum compensation, of Rs 1,00,000/- (one lakh) is fixed. The management, if unable to reinstate her, will pay her the said sum of Rs 1,00,000/- (one lakh) only within three months from the date of notification of this award, failing which the workman will be entitled to interest @ 12% till date of actual payment.

14. Award as above

RUDRESH KUMAR, Presiding Officer

Lucknow
27-3-2002

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1393.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एस.ई. रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं. 2, धनबाद के पंचाट (संदर्भ संख्या 170 आफ 1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-04-2002 को प्राप्त हुआ था।

[सं. एल-41012/262/97-आई. आर.(बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 3rd April, 2002

S.O. 1393.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref No 170 of 1998) of the Central Government Industrial Tribunal No 2, Dhanbad as shown in the Annexure, in the Industrial Dispute between the ... relation to the management of S E Railway ... workmen, which was received by the Central Government on 02-04-2002

[No L-41012/262/97-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD

PRESENT

Shri B. Biswas,
Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)
(d) of the I D Act., 1947

Reference No. 170 of 1998

Parties Employers in relation to the management
of S E Railway Chakradharpur and their
workman.

APPEARANCES

On behalf of the employers	None
On behalf of the workman	None
State	Jharkhand
Industry	Coal

Dated, Dhanbad the 22nd March, 2002

AWARD

The Govt of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I D Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No L-41012/262/97-IR (B-I), dated, the 9/17th July, 1998

SCHEDULE

“Whether the action of the management of S E Railway, Chakradharpur, Bihar in terminating the service of Shri Nara Gope and Baisku Gope is legal and justified? If not, to what relief the workmen are entitled?”

2. In this reference neither the concerned workman nor his representative appeared before this Tribunal on the date fixed. None also appeared on behalf of the management. It is seen from the record that the instant reference case was registered on 3-8-98 by this Tribunal for adjudication. According to Rule 10B clause (1) of the Industrial Disputes, Central Rules, 1957 it was mandatory on the part of the concerned workman to submit his W S within 15 days of the receipt of the order of reference. It is seen that since 1998 the concerned workman in spite of getting ample opportunities have failed to file W S. The concerned workman not only violated the statutory provision of law but also did not care for submitting W S even at a later stage. Registered notices were also issued to the parties but to no effect. Accordingly if the attitude of the concerned workman is taken into consideration there is sufficient scope to say that the concerned workman is not willing to proceed with the hearing of the instant reference case. Considering the conduct of the concerned workman there is reason to believe that it was a luxury on his part to raise such industrial dispute. I, therefore, hold considering the conduct of the concerned workman that presently no industrial dispute is existing between the parties and for which it is needless to proceed with the hearing of the case any further. Under such circumstances, a 'No dispute' Award is rendered and the reference is disposed of on the basis of the 'No dispute' between the parties.

B BISWAS, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1394.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ब्रिटिश बैंक आफ दी मिडल ईस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में औद्योगिक अधिकरण, कोलम के पंचाट (संदर्भ आई डी-9/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-04-2002 को प्राप्त हुआ था।

[सं. एल-12012/7/1999-आई. आर.-(बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 3rd April, 2002

S.O. 1394.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. I.D. 9/1999) of the Industrial Tribunal/Kollam as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of British Bank of the Middle East and their workmen, which was received by the Central Government on 02-04-2002.

[No. L-12012/7/99-IR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

IN THE COURT OF THE INDUSTRIAL TRIBUNAL, KOLLAM

(Dated, this the 19th day of March, 2002)

Present

SRI P.V. ABRAHAM

INDUSTRIAL TRIBUNAL

IN

INDUSTRIAL DISPUTE NO. 9/99

Between

- 1 The Manager, The British Bank of the Middle East, Diamon Hill, Vellayambalam, Trivandrum.

MANAGEMENTS

(By Sri, P Krishnan Kutty Nair, Advocate, Trivandrum)

2. The Managing Partner, M/s. Scorpeo Securities, Reg. Office KP-1/336, Ground Floor, Keltron Junction, Karakulam P.O., Trivandrum.

AND

Sri, C.C. John, Cheenivila Prajo Bhavan, Thamalam, Poojappura P.O., Trivandrum.

WORKMAN

AWARD

The Central Govt. as per Order No. L-12012/7/99/IR (B-I) dated 17-2-1999 referred this industrial dispute for adjudication to this Tribunal.

The issue referred for adjudication is the following:

“Whether the action of the management of British Bank of the Middle East, Trivandrum branch in not regularising Sri. C.C. John, an Armed Guard engaged through

M/s. Scorpeo Securities in their establishment and his consequent stoppage from work from 30-6-1998 is justified? If not to what relief he is entitled to?”

2. When this industrial dispute was taken up for hearing on 5-2-2002, the workman had filed a memo saying that he did not require any relief. In the circumstance it has to be presumed that no industrial dispute is subsisting between the parties.

3. In the result, an award is passed holding that no industrial dispute is subsisting between the parties.

P.V. ABRAHAM, Industrial Tribunal

नई दिल्ली, 4 अप्रैल, 2002

का.आ. 1995.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सऊथरन रेलवे के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, चेन्नई के पंचाट (संदर्भ सं. आई डी-49/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-04-2002 को प्राप्त हुआ था।

[सं. एल-41012/31/2000-आई. आर.-(बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 4th April, 2002

S.O. 1395.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. I.D. 49/2000) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Southern Railway and their workmen, which was received by the Central Government on 03-04-2002.

[No. L-41012/31/2000-IR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 21st March, 2002

PRESENT:

K. KARTHIKEYAN,
Presiding Officer

INDUSTRIAL DISPUTE NO. 49/2000

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10

of the Industrial Disputes Act, 1947 (14 of 1947), between Sri V. Venkatesh and the Management of Southern Railway, Chennai.)

BETWEEN

Sri V. Venkatesh : I Party/Workman

AND

The Deputy Chief Personnel Officer, Southern Railway, Chennai. : II Party/Management

APPEARANCE:

For the Workman : M/s. R. Vaigai & Anna Mathew, S. Karolin Geetha, Advocates

For the Management : Sri G. Kalyanasundaram, Addl. CGSC

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No. L-41012/31/2000/IR(B-I) dated 07/11-08-2000.

On receipt of the order of reference from the Government of India, Ministry of Labour, the case has been taken on file as I.D. No. 49/2000 and notices were sent to both the parties to the dispute, with a direction to appear before this Tribunal on 12-09-2000 to prosecute this case further. Accordingly, both the parties were appeared along with their respective counsels and have prosecuted this case by filing their Claim Statement and Counter Statement respectively and by marking their respective documents.

When the matter came up before me for final hearing on 25-02-2002, upon perusing the Claim Statement, Counter Statement, the other material papers on record, the oral and documentary evidence let in on either side, after hearing the arguments advanced by the learned counsel on either side, this matter having stood over till this date for consideration, this Tribunal has passed the following:—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as following:—

“Whether the action of the Chief Personnel Officer Southern Railway, Chennai, in terminating the services of the workman Shri V. Venkatesh with effect from 15-06-1999 is justified? If not to what relief is he entitled?”

2. The averments in the Claim Statement filed of the I Party/Workman Sri V. Venkatesh (hereinafter to as Petitioner) are briefly as follows:—

The Petitioner was appointed by order dated 31-12-1997 as substitute Bungalow Lascar against an existing vacancy in the Engineering Branch of the Southern Railway with effect from 22-12-1997. He was working in the Bungalow of Mr. Narayanan, Chief General Engineer. On the request of the said officer by his letter

dated 28-7-97, the Petitioner was appointed. The appointment order dated 31-12-97 stated that the services of the Petitioner are liable for termination, if found unsatisfactory or in the case of the officer not requiring his services or the officer getting transferred outside the Railway and the officer proceeding on long leave for studies, prolonged illness, deputation on foreign training for long period, retired etc. This order also stated that the Petitioner is eligible for regular absorption as Group D Staff in the scale Rs. 2550-3200 after three years of continuous service, subject to availability of vacancy and other conditions being satisfied. The Petitioner discharged his duties to the best of his ability without any complaints from the officer. From the date of joining service from November, 1997, he had not taken leave. Therefore, in April, 1999 the Petitioner requested Mr. Narayanan for permission to proceed to his home town Sengottai to visit his parents. Mr. Narayanan granted him leave from 12-4-99 to 15-4-99. Unfortunately, the Petitioner returned to Madras only on 16-4-99, because he missed the train on 14-4-99. The Petitioner worked in the Bungalow on 16-4-99 and 17-4-99 with the permission of Mrs. Narayanan. On 18-4-99, Mr. Narayanan returned from the Line duty and asked the Petitioner to vacate the quarters and stopped him from work, since he had taken extra days leave. Therefore, the Petitioner was forced to leave for his native place Sengottai. However, the Petitioner requested Mr. Narayanan several times to take him back into service. In fact, the Petitioner and his father visited Mr. Narayanan and requested him to reconsider his decision and reinstate him in service but Mr. Narayanan was unrelenting. The Petitioner received an order dated 5-7-99 on 10-7-99 terminating him from service with effect from 15-6-99. The Petitioner made repeated requests for reinstatement, but he did not receive any favourable reply. Since he was left with no other option, he raised an industrial dispute before the Regional Labour Commissioner on 11-11-99. The Respondent sent its reply dated 30-12-99 to the Regional Labour Commissioner. In this reply, for the first time, the Respondent made it known that the reason for the termination was because of the Petitioner's alleged unsatisfactory performance in his duties and that the Petitioner's conduct was observed to be questionable and he was orally warned several times, but he did not correct himself. The Respondent also took the stand that the Petitioner's appointment was on the basis that if his services were unsatisfactory, he could be terminated. Therefore, the termination was in order. Since the Regional Labour Commissioner could not bring about an amicable settlement, he sent his failure report on 23-2-2000, which resulted in reference dated 11-8-2000. The termination of the Petitioner's service is in violation of the provisions of Industrial Disputes Act. The mandatory provisions of Section 25F have been violated, hence the termination is void ab initio and the Petitioner is entitled to reinstatement with full back wages and continuity of service. The Petitioner has worked continuously for more than 240 days between 22-11-97 and 18-06-99 in a calendar year. Hence, he is entitled to notice and retrenchment compensation. Since the Respondent has taken the stand that the Petitioner's services were terminated for misconducts and unsatisfactory performance, he ought to have been issued with a charge sheet and disciplinary proceedings ought to have been initiated before the order of termination. The Respondent cannot resort to termination of the Petitioner's services merely on the basis of the appointment order and conditions mentioned therein, without taking into consideration the law and its

requirements. The Petitioner has not committed any acts of misconduct and the termination of the service is highly unfair, arbitrary and without any basis. Assuming without admitting that the Petitioner is guilty of any misconduct, the punishment of termination is very harsh and liable to be interfered with by this Hon'ble Tribunal under section 11A of the Act. It is, therefore, prayed that this Hon'ble Tribunal may be pleased to hold that the non-employment of the Petitioner w.e.f. 15-06-99 is unjustified and direct the Respondent to reinstate the Petitioner in service with back wages, continuity of service and all other attendant benefits with costs.

3. The averments in the Counter Statement of the II Party/Management, Deputy Chief Personnel Officer, Southern Railway, Chennai. (hereinafter refers to as Respondent) are briefly as follows :—

The petition is not maintainable either in law or on facts. The post of Bungalow Lascar (Peon) is the post to do domestic assistance in the residence of the officer. It is the post where the appointment is on the choice of the officer, on whose recommendation, the candidate will be appointed and not governed by normal recruitment rules. The Petitioner was engaged in the residence of Shri G Narayanan, Chief General Engineer, Headquarters Office, Southern Railway. The service in the post is purely temporary in nature and at any time the Petitioner's services are liable to be discharged from duty within three years of service from the date of engagement, without assigning any reason or notice. The section 2(i) of the Industrial Disputes Act, (Amended Act) defines the 'Industry' under which domestic services are not covered. Therefore, the Petitioner cannot invoke the provisions of Industrial Disputes Act. The Petitioner is not a workman as defined in Section 2(s) of the Industrial Disputes Act, and cannot invoke the provisions of Industrial Disputes Act, since the post of Bungalow Lascar is to do only domestic work in the residence of the officer. Therefore, the petition is liable to be dismissed in limine. The Principal Bench as constituted by the Central Administrative Tribunal had decided a Case in respect of services of Bungalow Lascars, because the learned counsel for the parties conceded that the Bungalow Peon/Khalasis were not railway employees and their services being purely contractual in nature, could be terminated at any time in terms of their contract, so long as they did not acquire temporary status. Therefore, the Petitioner is not a railway employee and the service of the Petitioner is in temporary nature and has no right over the post are liable to be terminated. The Bench has further observed that 'as a general principle, it cannot be laid down that after putting 120 days continuous service, a Bungalow Peon acquires temporary status also does not arise for reason given in that order.' He acquires temporary status on completion of such a period of continuous service as may be prescribed by the General Manager of the Railway under which he works and which is current on the date of his employment as a Bungalow Peon. The Bench has further observed that after acquisition of temporary status by a Bungalow Peon, his service can be terminated on the ground of unsatisfactory work without holding departmental enquiry. It is the further observation of the Bench in that case that the termination of the service of a substitute Bungalow Peon, who has acquired temporary status is not bad or illegal for want of notice before termination. In such case, he may be entitled to pay for the period of notice, in lieu of notice as stated in that order. In the above said circumstances, the Petitioner is not entitled for any benefit,

as prayed, and the petition is liable to be dismissed. The Petitioner was given appointment under the clear instructions that his services are liable for termination, if found unsatisfactory or in the case of an officer not requiring his service or the officer getting transferred outside the Railway etc. On 28-12-99, Sri G. Narayanan, Chief General Engineer has sent a report against the Petitioner that the Petitioner has fallen sick often and unable to discharge his duties satisfactorily and found to be in bad company and he has been orally warned several times for his bad conduct. As his service and conduct are continued to be unsatisfactory, he may be terminated from railway service. Since the Petitioner availed more than normal rest due to his ill health and consequently fall in often and the conduct of the Petitioner was also not satisfactory. Therefore, his service has been terminated w.e.f. 15-6-99 with the approval of the competent authority. The allegation of the Petitioner that he was continuously working is totally false. In terms of para 1502(1) of Indian Railway Establishment Manual Vol. I which reads as 'when a person without a lien on a permanent post under Govt. is appointed to hold a temporary post or to officiate in a permanent post, he is entitled to no notice of termination of his service.' Therefore, the Petitioner was paid pay and allowances amounting to Rs. 1647/- in lieu of 14 days notice pay. The Railway Board or the General Manager of Railways could make rules or issue instructions from time to time for appointment of substitute on such terms and conditions as decided by them. The meaning of 'substitute' given in para 1512 of Indian Railway Establishment Manual states as the purpose of their employment would appear to be that of making stop gap arrangement. Ordinarily persons employed on stop gap arrangement are not entitled to any such right or privilege as recognised by the Railway Board in para 1515 of the Manual. The para 1515 of the Manual is applicable only to Casual Labour attaining temporary status. Hence, the para 1515 is not applicable in this case. The Hon'ble Tribunal has observed in the case cited 'that the Govt. has powers and jurisdiction to terminate simpliciter, the service of a temporary Govt. servant.' The Petitioner is not a regular employee. His nature of employment is domestic service. Since the post of Bungalow Lascar is to do only domestic work in the residence of the officer, it will not come under the purview of the Industrial Disputes Act. Therefore, the Section 25F is not applicable to the Petitioner and he is not entitled to notice and retrenchment compensation. The service of the Petitioner is in temporary nature and has no right over the post. Therefore, the question of issue of charge sheet and disciplinary proceeding would not arise. The Supreme Court has already held in a case that 'in the case of a probationer or a temporary employee, who has no right to the post, such a termination of his service is valid and does not attract the provisions of Article 311 of the Constitution'. Since the post held by the Petitioner is a temporary post and the Petitioner has no right over the post, his services are liable to be terminated, if found to be unsatisfactory. Since the provision of the Industrial Disputes Act is not applicable to the Petitioner, the Petitioner cannot invoke Section 11A of the Industrial Dispute Act. The Petitioner is not a railway employee. The termination of service of the substitute Bungalow Peon, who has acquired temporary status is not bad or illegal for want of notice before termination. Because, the Petitioner has put continuous service, it does not arise that the Bungalow Peon acquires temporary status. He acquires temporary status on completion of such a period of continuous service as may be prescribed by the General

Manager of the Railway under which he works and which is current on the date of his employment as a Bungalow Peon. Even after acquiring temporary status by a Bungalow Peon, his service can be terminated on the ground of unsatisfactory work without holding departmental enquiry. The termination of the service of a substitute Bungalow Peon, who has acquired temporary status, is not bad or illegal for want of notice before termination. In such case, he may be entitled to pay for the period of notice. Therefore, the discharge from service of the Petitioner is justified and the Petitioner is not entitled to any relief under Industrial Disputes Act. The petition is totally misconceived and devoid of merits. Therefore, in the said circumstances, it is prayed that this Hon'ble Tribunal may be pleased to dismiss the petition with cost.

4. When the matter was taken up for enquiry, the Petitioner has been examined as WW1. On the side of the management one Mr. V.P. Ramesh has been examined as MW1. Eight documents on the side of the Petitioner and Six documents on the side of the Respondent were marked as Ex. W1 to W8 and M1 to M6 respectively. The learned counsel on either side have advanced their arguments.

5. The Point for my consideration is—

“Whether the action of the Chief Personnel Officer, Southern Railway, Chennai, in terminating the services of the workman Shri V. Venkatesh with effect from 15-6-1999 is justified? If not, to what relief is he entitled?”

Point :-

This is an industrial dispute raised by the Petitioner/ Workman Sri V. Venkatesh challenging the action of the Chief Personnel Officer, Southern Railway in terminating his services with effect from 15-6-99. It is admitted that the Petitioner was engaged as substitute Bungalow Lascar to Chief General Engineer, Sri G. Narayanan after the Petitioner was found medically fit in the medical examination for fitness for appointment to Southern Railway. Prior to that a requisition dated 28-11-97 was sent by the Chief General Engineer, Sri G. Narayanan enclosing the application given by the Petitioner Sri V. Venkatesh for posting him as Bungalow Lascar. The xerox copy of that request sent by the Chief General Engineer, Sri G. Narayanan to the General Manager (Personnel) of Southern Railway is Ex. W1. The xerox copy of the physical fitness certificate (duplicate) dated 19-12-97 issued by the Railway Medical Examiner certifying the Petitioner Sri V. Venkatesh, a candidate for appointment as substitute Bungalow Lascar has found to be a fit person on medical examination for such appointment is Ex. W2. Ex. W3 is the xerox copy of the joining report dated 22-12-97 submitted by the Petitioner Sri V. Venkatesh, Ex. W4 is the typed copy of note dated 23-12-97 sent by the Headquarters office, Chennai about reporting of the Petitioner for duty as a substitute Bungalow Lascar to Chief General Engineer/H/MAS on the forenoon of 22-12-97. Ex. M1 is the xerox copy of the office order dated 31-12-97 passed by the Assistant Personnel Officer, Headquarters Office, Personnel Branch, Southern Railway, Chennai about the appointment of the Petitioner as substitute Bungalow Lascar to Chief General Engineer, Sri G. Narayanan against an existing vacancy in Engineering branch/Headquarters/Madras w.e.f. 22-12-97 forenoon. Petitioner has been examined as WW1, while the Personnel Inspector in Headquarters Personnel branch Sri V.P. Ramesh has been examined as MW1. He admits that Ex.

M1 is the xerox copy of the appointment order issued to the Petitioner. It is the evidence of MW1 that as per the conditions in the appointment order, on completion of three years service, if there is a vacancy, the Petitioner can be considered for regular appointment. Ex. M6 is the xerox copy of the order dated 5-7-99 terminating the service of the Petitioner Sri V. Venkatesh, substitute Bungalow Lascar/ Peon to Sri G. Narayanan Chief General Engineer, Headquarters. It is the plea and the evidence of the Petitioner as WW1 that he requested Mr. G. Narayanan for permission to proceed to his hometown Sengottai to visit his parents and Mr. G. Narayanan granted him leave from 12-4-99 to 15-4-99 and since he missed the train, he could not come back to work on 15-4-99, but he came to work on 16-4-99 and that day, the Chief General Engineer Mr. G. Narayanan was not in station. It is his further evidence as WW1 that the wife of Mr. G. Narayanan allowed him to work in the bungalow on 16-4-99 and 17-4-99 and Mr. G. Narayanan returned from line duty on 18-4-99, ask the Petitioner to vacate the quarters and stopped him from work, since he had taken an extra day's leave. It is the evidence of MW1 that as per the conditions in the appointment order Ex. M1 if the work of the Petitioner is not satisfied, he can be terminated from service and that Chief General Engineer, Mr. G. Narayanan by his letter dated 3-6-99, has informed the office that the duties of the Petitioner was not satisfactory and his conduct was also not satisfactory. The xerox copy of that communication is Ex. M2. It is his further evidence that the Petitioner himself stopped coming to duty and that the Petitioner was holding a temporary post, there was no enquiry and that Ex. M6 is the xerox copy of the termination order issued to the Petitioner. It is his admission in the cross examination that the railway appoints the Petitioner on the recommendation of Mr. G. Narayanan for domestic service and that the railway paid him the salary and that the railways issued the termination order for the Petitioner. It is his further admission that railways is maintaining the attendance register and it will show whether the Petitioner as Bungalow Lascar was attending his duties regularly. But it is the specific contention of the Respondent/Management in their Counter Statement that the Petitioner as Bungalow Peon is not railway employee and his services are purely contractual and he can be discharged in terms of the contract. It is further alleged in the counter statement the Hon'ble Principal Bench of Central Administrative Tribunal has decided in a similar case that 'the Bungalow Peon/Khalasis were not railway employees and their service were purely contractual in nature could be terminated at any time in terms of the contract, so long as they did not acquire temporary status. Therefore, the Petitioner is not a railway employee and he has no right over the post and he is liable to be terminated. It is seen from the averments made in para 6 of the Counter Statement that those observation or conclusion have been made by the Hon'ble Principle Bench of Central Administrative Tribunal on the basis of the counsel for the either parties conceded that the Bungalow Peons were not railway employees and their services are contractual in nature. From this, it is seen, as contended on behalf of the Petitioner during argument, that the said conclusion has not been arrived at by the Hon'ble Central Administrative Tribunal, on merits, after hearing the counsel on either side as a contested one.

6. Further, apart from the admission of MW1 in the cross examination that the railway is only having control over the employment of the Petitioner as Bungalow Lascar

by appointing him in service, paying him salary, maintaining attendance register and by issuing termination order. It is not the stand of the Respondent/Management that the Chief General Engineer Mr. G. Narayanan who sent a letter request under Ex. W1, have the authority to appoint the Petitioner as Bungalow Lascar. In that letter Ex. W1, he has made a request to the appointing authority to consider the representation of the Petitioner for engaging him as Bungalow Lascar for the Chief General Engineer. Ex. M1 appointment order dated 31-12-97 was issued by the Assistant Personnel Officer for Headquarters office of Southern Railway, Chennai. It is mentioned in Ex. M1 that after having found the Petitioner medically fit on the basis of fitness certificate issued by the Medical department of Southern Railway dated 19-12-97 under Ex. W2. The Petitioner was engaged as substitute Bungalow Lascar to Chief General Engineer against an existing vacancy in Engineering Branch/Headquarters/Madras w e f 22-12-97 forenoon. So, such order of appointment for the Petitioner has been passed by way of an order dated 31-12-97 by the competent authority in the Southern Railway. Further, in the Counter Statement of the Respondent, it is alleged that as per the terms of para 1502 I of Indian Railway Establishment Manual Vol. I, the Petitioner's services were terminated and he was paid 14 days notice pay. It is further contended in the Counter Statement of the Respondent that General Manager of railway could make rules or issue instructions from time to time for appointment of substitute on such terms and conditions as decided by them. In the counter the Respondent has made reliance in para 1515 of Indian Railway Establishment Manual Vol. I. From all these contentions of the Counter Statement and the particulars available in Ex. W1, W2, M1, M3 to M6, coupled with the admissions of MW1 in his cross examination, it can be concluded that the contention of the Respondent/Management in the Counter Statement that the Petitioner as Bungalow Peon is not a railway employee is incorrect and unacceptable. The argument advanced by the learned counsel for the Respondent in this regard also is incorrect. Though the Petitioner was a sponsored candidate by the Chief General Engineer Mr. G. Narayanan for the post of Bungalow Peon, he has been engaged against an existing vacancy in the Engineering branch/Headquarters/Madras in Southern Railway, as it is mentioned in Ex. M1. The Railway Medical Department only has examined the Petitioner to assess his physical fitness to be appointed as a Bungalow Lascar. Ex. W7 is said to be a free pass issued to the Petitioner for travelling from Chennai Egmore to Quilon as an employee of the railways as Bungalow Peon. It was issued on behalf of the General Manager, Southern Railway. Ex. W8 is the salary slip issued to the Petitioner for April, 1999 for drawal of his pay as Bungalow Peon. In that pay slip, his next increment date, the date of retirement, recovery towards provident fund subscription, LIC and professional tax also have been mentioned. These two documents also along with the other oral and documentary evidence in this case, establishes the fact that the Petitioner was engaged as a railway employee with the Respondent/Southern Railway Management. So, the Respondent/management Southern Railway is the master of the Petitioner/Workman and there was master and servant relationship existed between the Respondent/Southern Railway and the Petitioner/Workman and not between the Chief General Engineer Mr. G. Narayanan and the Petitioner. Further the reliance made by the Respondent on the provisions of the Railways Manual also go to show that the Petitioner has

been engaged as the workman of the Engineering department of Railways in the then existing vacancy.

7 It is contended in the Counter Statement of the Respondent and also the evidence of the MW1 that on the report given by the Chief General Engineer Mr. G. Narayanan dated 3-6-99, the xerox copy of the same is Ex. M2(1), the Petitioner has been terminated from service. So, Chief General Engineer Mr. G. Narayanan did not choose to take any action directly against the Petitioner, he only sent a communication under Ex. M2(1) requesting the competent authority to discharge the Petitioner from service as substitute Bungalow Lascar. He has stated in that letter that the Petitioner may be terminated from railway service with due notice, as per rules. Under such circumstances, it is incorrect to contend by the Respondent/Management that the Petitioner is not a railway employee.

8 It is a specific contention of the Petitioner in his Claim Statement that he had worked continuously more than 240 days between 22-11-97 and 18-06-99 in a calendar year and hence he is entitled to notice and retrenchment compensation. It is further contended that since the Respondent has taken the stand that the Petitioner's services were terminate for misconduct and unsatisfactory performance, he ought to have been issued with the charge sheet and disciplinary proceedings ought to have been initiated before the order of termination and that the Respondent can not resort to terminate the Petitioner's services, merely on the basis of the appointment order and the conditions mentioned therein, without taking into consideration the law and its requirements. It is argued on behalf of the Petitioner that since the Petitioner is employed by the Southern Railway authorities and the railway being an industry, section 25F of Industrial Disputes Act will apply. The non-compliance of the provision under section 25F by the Respondent/Southern Railway Management before ever terminating the Petitioner from service is illegal and unjust. Hence, before proving the alleged charges of misconduct and unsatisfactory performance of duty by the Petitioner in a proper enquiry, the Respondent/Management cannot terminate the services of the Petitioner and it is unfair, arbitrary and without any basis. Therefore, the Respondent must be directed to reinstate the Petitioner in service with all attendant benefits. The learned counsel for the Respondent would contend as it is alleged in the Counter Statement of the Respondent that the service of the Petitioner is purely temporary in nature and as per the terms in the appointment order, his services are liable to be discharged within three years from the date of engagement, without assigning any reason or notice and the Petitioner being a temporary employee, has no right to the post and as such the termination of the Petitioner from services is valid and since the post of Bungalow Lascar is to do only domestic work in the residence of the officer and will not come under the purview of the Industrial Disputes Act itself, section 25F of the Industrial Disputes Act is not applicable to the Petitioner and he is not entitled to notice and retrenchment compensation.

9 As it is pleaded in the Claim Statement of the Petitioner he has given evidence as WW1 to the effect that he has completed 240 days of continuous service. This has not been denied by the Respondent in their Counter Statement or MW1 in his evidence. It is held in a case reported as (1990) 14 Administrative Tribunal Cases 106 (Vol. 14-1990) between C. R. HARIHARAN and CHIEF

PERSONNEL OFFICER AND OTHERS, the Hon'ble Tribunal was pleased to observe that the applicant is a workman and hence the termination of his service be a retrenchment and therefore if the conditions imposed under section 25F of Act had been violated, it would render the order of termination void. In the present case as it is contended by the learned counsel for the Respondent/Management, the order of termination has been made as per the terms of the order of appointment Ex M1. The Andhra High Court in a decision B CHENNAIAH Vs DIVISIONAL MANAGER ANDHRA PRADESH STATE TRANSPORT CORPN (1987) II LLN 446 has held that a stipulation in the contract of employment reserving unilateral right to terminate the services of an employee would not fall under section 2(oo) (bb). Therefore, the order of termination will not fall under the exception containing section 2(oo) (bb). Therefore, as it is held in that decision of the Andhra Pradesh High Court, the impugned order of termination of the Petitioner is only a retrenchment and comes within the scope of section 2(oo) of the Act. Admittedly, the impugned order cannot be sustained because of the conditions mentioned in Section 25F had been violated which would render the order of termination null and void. So under such circumstances, from the available materials it is seen that the Petitioner was in continuous service under the Respondent/Management as a Bungalow Lascar from 22-12-97 till he was terminated from service w e f 15-06-99. As stated earlier for the alleged misconduct of the Petitioner when he was in service no disciplinary action was taken against him by the Respondent/Management by issuance of charge sheet and by taking disciplinary proceedings in pursuance of the same. Even before this Court the Respondent has not chosen to let in any evidence with regard to what it is stated in Ex M2(1) to M2(2) the report of the Chief General Engineer Sri G Narayanan in respect of the alleged misconduct of the Petitioner. There is no evidence at all on the side of the Respondent Management to show that the Petitioner has committed such misconduct as mentioned in Ex M2. Further in the order of termination Ex M6 also it is not stated that the service of the Petitioner as substitute Bungalow Peon to Sri G Narayanan has been terminated since the concerned officer has found the Petitioner's service unsatisfactory or he has reported about his conduct as a questionable one. Hence the order of terminated dated 5-7-99 passed by the Respondent terminating the Petitioner from service w e f 15-6-99 is not justified. So the Petitioner is entitled for the relief of reinstatement in service. Considering the continuous service of the Petitioner as a properly appointed substitute Bungalow Lascar by the Respondent/Railway Management, the Respondent is directed to consider reinstatement for the Petitioner/Workman for regular absorption as Group D staff in the next immediately arising vacancy. Thus the point is answered accordingly.

10. In the result an Award is passed holding that the I Party/Workman Sri V Venkatesh is entitled for reinstatement in service and the II Party/Southern Railway Management Chennai is directed to consider reinstatement of the Petitioner/Workman for regular absorption as Group D post in the next immediately arising vacancy. No Cost.

(Dictated to the Stenographer transcribed and typed by him corrected and pronounced by me in the open court on this day the 21st March 2002.)

K KARTHIKEYAN Presiding Officer

Witnesses Examined

For the I Party/Workman WW1 Shri V Venkatesh
For the II Party/Management MW1 Shri V P Ramesh

DOCUMENTS MARKED

Ex the I Party/ Workman —

Ex. No	Date	Description
W1	28-11-97	Xerox copy of the note sent by the Chief General Engineer regarding Appointment of Bungalow Lascar
W2	19-12-97	Xerox copy of the physical fitness certificate in respect of Sri V Venkatesh
W3	22-12-97	Xerox copy of the joining report of the Petitioner
W4	23-12-97	Xerox copy of the note of the Chief Engineer With regard to appointment of sub bungalow lascar
W5	11-11-99	Xerox copy of the letter from Petitioner to the Regional Labour Commissioner (Central)
W6	30-12-99	Xerox copy of the reply of the Respondent To Assistant Labour Commissioner (Central)
W7	09-03-99	Original II Class Railway Pass issued to the Petitioner for his journey from Chennai to Quilon
W8	07-02-94	Carbon copy of the pay slip of the Petitioner issued by the Respondent/Management

For the II Party/Management

Ex No	Date	Description
M1	31-12-97	Xerox copy of the appointment order issued By the Respondent to the Petitioner
M2 series(2)		
	03-06-99	Xerox copy of the report of the Chief General Engineer
M3	Nil	Xerox copy of the Chapter XV with regard to terms & conditions applicable to Railway Servants and Substitutes in temporary service-para 1501 of IREM Vol I
M4	Nil	Xerox copy of the paras 1503 to 1513 of IREM Vol I
M5	Nil	Xerox copy of the para 1515(1) of IREM Vol I
M6	5-7-99	Xerox copy of order of termination of the Petitioner from service by Dy Chief Personnel Officer

नई दिल्ली, 5 अप्रैल, 2002

का.आ. 1396.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पांडेयन ग्रामा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण 1, लेबर कोर्ट, चेन्नई के पंचाट (संदर्भ संख्या आई. डी. 466/2001) को काशित करती है, जो केन्द्रीय सरकार को 04-04-2002 को प्राप्त हुआ था।

[सं. एल-12012/57/97-आई.आर. (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 5th April, 2002

S.O. 1396.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. ID. No. 466/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of Pandyan Grama Bank and their workman, which was received by the Central Government on 04-04-2002.

[No. L-12012/57/97-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 28th March, 2002

PRESENT:

K. KARTHIKEYAN, Presiding Officer

INDUSTRIAL DISPUTE No. 466/2001

(Tamil Nadu State Industrial Tribunal I. D. No. 7/98)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 10 of the Industrial Dispute Act, 1947 (14 of 1947), between the Workman Sri T. Chellam and the Management of Pandyan Grama bank, Virudhunagar.,

BETWEEN

SRI T. Chellam : Ist Party/Workman

AND

The Chairman : IInd Party/Management
Pandyan Grama bank, Virudhunagar.,

Appearance .

For the workman : M/s. P V.S. Giridhar
Devi Shanker &
R Srinivasan, Advocates

For the Management M/s Row & Reddy,
S Vaidhyanathan &
W. T. Prabakar, Advocates

The Govt. of India, Ministry of Labour in exercise of Powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No. L-12012/57/97/IR (B-I) dated 02-01-98.

2. This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, Chennai where it was taken on file as I.D. No. 7/98. When the matter was pending enquiry in that tribunal, the Government of India, Ministry of Labour was pleased to order transfer of this case from that tribunal to this tribunal for adjudication. On receipt of records from that Tamil Nadu State Industrial Tribunal, the case has been taken on file as I.D. No. 466/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 01-03-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case by filing their Claim Statement and Counter Statement respectively.

3. When the matter came up before me for final hearing on 14-02-2002, upon perusing the Claim Statement, Counter Statement, the other material papers on record, the oral and documentary evidence let in on either side, and after hearing the arguments advanced by the learned counsel on either side, this matter having stood over till this date for consideration, this Tribunal has passed the following:

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows:

"Whether the action of the Management of Pandyan Grama Bank in terminating the employment of Sri T. Chellam is justified? If not, what relief the concerned workman is entitled to?"

4. The averments in the Claim Statement of the I Party/Workman Shri T. Chellam (hereinafter refers to as Petitioner) are briefly as follows:

The Petitioner was appointed as a commission agent in the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) as part of a scheme called Nitham Valar Nithi Scheme, by an order of appointment dated 14-12-1979. He was appointed as collection agent on prior approval of the Head Office by signing an agreement with the Respondent/Bank. He had furnished a security deposit of Rs. 1000/-. He was paid commission on the collection made by him at the rate of 3%. He should remit the entire collection made on the previous day into the bank before the banking hours on the next day. If he fails to do so, he will loose 50% of the commission on the amount collected and in case of default exceeding one day, he will loose the entire commission. The workman is taken to task, when any depositor closes the account within a period of six months to twenty four months from the date of opening of the said account. There will be a reduction of the commission payable to the agent in that event. For all acts of commission and omission of the nominee, the collection

agent will be responsible and answerable to the bank. The respondent has issued a letter to the Manager dated 2-3-95 not allowing to open new accounts, if the deposit on the head of 'NVN' account is less than five lakhs. Thus, the number of accounts dwindled with consequent decrease in the earning of the deposit collectors. As such, the Respondents have failed to give work to the Petitioner. Hence, this action of the Respondent in terminating the service of the Petitioner indirectly without giving reasons is arbitrary and unreasonable. The Petitioner filed a petition before the Assistant Labour Commissioner on conciliation seeking to reinstate the Petitioner with back wages and continuity of service. On failure of conciliation efforts taken by the Assistant Labour Commissioner, he submitted a failure of conciliation report to the Government, which in turn referred this matter as an industrial dispute for adjudication by this Tribunal. The impugned order is arbitrary and unreasonable and violative of the Petitioner's rights under Articles 14, 16 and 21 of the Constitution. The Division Bench of High Court Madras, in a batch of appeals has held that there is sufficient control over the work of Tiny Deposit Agents by the bank, that the Tiny Deposit Agent is a workman as defined in section 2(2) of the Industrial Disputes Act and that such a Tiny Deposit Agent is not an independent contractor but part of the organisation. Though in the letter of appointment issued by the bank to the Petitioner, commission was fixed payable to the Petitioner at 3% on the total collection made by the Petitioner each month, clause 16 of the agreement provided that the commission could be determined by the bank time to time. As per rule of the scheme, opening of the account should be done only after the supervisory official authorises the same, though the collecting agent is permitted to receive deposits from door to door. This is an important circumstances which shows that the collecting agent is not an independent contractor so as to enrol customers of the bank on his own. The Tiny Deposit Agent is undoubtedly engaged in the business of the bank i.e. the deposit mobilisation. The remuneration of the Tiny Deposit Agent is fixed in the agreement. Though it is called commission, it will still be remuneration as defined by the decisions of the Supreme Court as well as the definition of the wages in the Industrial Disputes Act. The nature of work of the Petitioner demands daily attendance in bank and deposit of the collections made by him on the previous day. The Petitioner has to do some clerical work as he is bound to fill up relevant forms, ledgers, pass books, etc. The Petitioner should furnish a security deposit of Rs. 1000/- which will be placed in fixed deposit for a minimum period of three years. The bank can instruct the agent not to enroll new subscribers at any time. The provision enabling the agent to terminate the agency on giving the bank a month's notice is the circumstances, which goes to show that it is a contract of service. The impugned order of the Respondent does not allow the workmen to open a fresh account under 'NVN' scheme and thereby terminated the services of the Petitioner. The action of the Respondent in terminating the service of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice. The action of the Respondent in terminating the service of the Petitioner is violative of Chapter VA and Chapter VB particularly section 25F of the Industrial Disputes Act. No notice has been served prior to the issuance of the said order, nor was retrenchment compensation paid. The Govt. Ministry of Finance issued a directive not to wind up the said scheme. Many of the nationalised banks which were virtually

winding up the said scheme restored it. Therefore, it is prayed that this Hon'ble Court may be pleased to set aside the impugned order dated 2-3-95 and direct the Respondent to reinstate the Petitioner in service with back wages, continuity of service and all other attendance benefits.

5. The averments in the Counter Statement filed by the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) are briefly as follows :—

The Petitioner was engaged as Nitham Valar Nithi Scheme agent from 14-12-1979. Unlike the regular employees of the bank, he was not paid salary. He was paid only commission depending upon the amount of deposit collected. Unlike the regular bank employees he was not required to attend the bank daily or sign the attendance register. He was not required to attend to any other work in the bank. His work consisted in collecting tiny deposits and deposit them into the bank the next day. He may not be doing collection work not more than twice a week. He is governed by the Agency agreement. Unlike other employees, he was not subject to the disciplinary control of the bank and there are no fixed hours of work. The Nitham Valar Nithi Scheme was in operation in the Respondent/Bank since 1979. During State Level Review Committee meeting convened by NABARD on 10-01-95 at Madras, this matter was discussed and the Respondent was advised to review the cost factor in continuing Nitham Valar Nithi Scheme. Subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme in the bank as discussed at the State Level Review Committee meeting. On that basis, the Board of Directors of the bank made a review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs. 5,00,000/-. Accordingly, the bank during the Board of Directors' meeting held in February, 1995 decided to discontinue the scheme at the branches, where Nitham Valar Nithi Scheme deposit outstanding was less than Rs. 5 lakhs. When this was implemented, the outstanding under Nitham Valar Nithi Scheme in T.V. Mangai branch was less than Rs. 5 lakhs. Moreover, the agency agreement entered into between the bank and the Petitioner clearly states that the bank shall also be at liberty to terminate the agency any time without assigning any reason whatsoever. The Respondent/Bank is a public sector bank which continues to incur heavy loss. When the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches. When the scheme is withdrawn naturally the agent engaged purely on temporary and commission basis ceased to be engaged further. This has been done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. This by no stretch of imagination can be considered unreasonable arbitrary and violative of rights of the Petitioner. NVN rules provides that the depositor may open the account through the collection agent authorised by the bank in this behalf. Thus, it is clear that the Nitham Valar Nithi agent is free to open an Nitham Valar Nithi account on his own. The Nitham Valar Nithi agents were not the employees of the bank as their relationship with the bank was only that of contract for service and not contract of service. Nitham Valar Nithi agents need not comply with the minimum conditions stipulated for recruitment as employees of the bank such as age, qualification etc. They were engaged purely on

commission basis. Even though, he attended collection work in a day, but no collection is effected he would not be paid commission for that day. So, the commission cannot be treated as wages. Quite recently, the Andhra Pradesh High Court has held in a case that tiny deposit collectors/ Nitham Valar Nithi agents in bank are not workmen. The Nitham Valar Nithi agents come to the branch only when they have to remit the amount they collected towards Nitham Valar Nithi Scheme. He has to fill up only specific forms such as list of accounts in which he had made collection and enter the amount collected in the pass book. Though Nitham Valar Nithi agents were authorised to enter in the pass book, it is not authoritative and it is subject to verification by the bank with the Nitham Valar Nithi ledger. Nitham Valar Nithi agents was not required to attend any other work in the bank. Nitham Valar Nithi agents are not workmen, even assuming so they cannot complain about violation of Section 25F and other provisions of the Industrial Disputes Act, 1947 as the action of the bank is valid as per section 2(oo) 2(bb) of the Industrial Disputes Act, 1947. The Petitioner has signed the agreement wherein stipulation No. 5 of the agency agreement states that the bank shall also be at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice. There is no provision in agency agreement saying that notice should be issued to Nitham Valar Nithi agents prior to their termination and also there is no provision in the agreement to pay compensation. Hence, there is no violation of section 25F of the Industrial Disputes Act, 1947. In any event, he cannot claim reinstatement because there was no post of Nitham Valar Nithi agent. It was only an agency between the Petitioner and the bank and the scheme came to be abolished as far as T.V. Mangai branch is concerned. That is why, the Andhra Pradesh High Court has held at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. For all the reasons mentioned it is prayed that this Hon'ble Tribunal may be pleased to pass an award rejecting the claim of the Petitioner with cost.

6. When the matter was taken up finally for enquiry, the learned counsel appearing on either side represented that a joint trial can be held for this case along with the other similar cases, 13 in number. The evidence let in on either side both oral and documentary can be treated as a common evidence in all these 14 cases. As per their request, a joint trial has been conducted and evidence recorded in these cases along with other cases have been treated as common evidence on either side. Out of the fourteen petitioners of these fourteen cases, ten have been examined as WW1 to WW10 and on the side of the management one common witness has been examined as MW1. For the Petitioner/ Workmen seven documents have been marked as Ex. W1 to W7 and for the management twenty three documents have been marked as Ex. M1 to M23 as common documentary evidence in all these cases. The arguments advanced by the learned counsel on either side was heard.

7. The point for my consideration in—

“Whether the action of the Management of Pandyan Grama Bank in terminating the employment of Sri T. Chellam is justified? If not, what relief the workman is entitled to?”

Point :—

The Petitioner Sri T. Chellam has been employed by the management Pandyan Grama Bank as an agent for collecting amounts from the depositors towards Nitham Valar Nithi, a deposit Scheme introduced by the Respondent/Bank. For that the Petitioner had entered into an agreement with the Respondent/Bank. The Petitioner, as an agent for collecting amount as tiny deposits from the depositors under the said scheme, has to deposit the collected amount into the bank next day. The Petitioner was engaged as such by the Respondent/Bank on commission basis. It is the admission of the Petitioner that he was paid commission on the collection made by him at the rate of 3%. The zerox copy of the S.B. pass book of the Petitioner wherein the payment of his commission has been credited. The Petitioner was engaged for the T.V. Mangai branch of the Respondent/Bank as a collection agent for tiny deposits under Nitham Valar Nithi Scheme. The Respondent/Management had sent a letter dated 2-3-95 to the Managers of certain branches of the Respondent/Bank informing that as per the advice given by NABARD in the meeting held on 10-1-95 at Madras, the Board of Management of Respondent/Bank has also resolved to discontinue the Nitham Valar Nithi Scheme in the branches, where the outstanding is less than Rs. 5,00,000/- as on 31-1-95 and advice the branch to open any fresh Nitham Valar Nithi account from 1-4-95 and to continue the existing Nitham Valar Nithi accounts in the maturity/closure of period/accounts. The zerox copy of that letter sent to the Manager of Koomapatti branch of Pandyan Grama Bank is Ex. W 6 as it is sent to T.V. Mangai branch. In pursuance of the same, the Manager of the said branch of the Respondent/Bank, informed the Petitioner, a collecting agent under Nitham Valar Nithi Scheme not to open new accounts and thereby the Petitioner was not given work by the Respondent/Bank. This non-employment of the Petitioner has been mentioned by the Petitioner in his Claim Statement as termination of his service indirectly without giving reasons and it is arbitrary and unreasonable. It is the contention of the Respondent/Management in their Counter Statement that during state level review committee meeting convened by NABARD on 10-1-95 at Madras, the matter was discussed and the management of the Respondent/Bank was advised to review the cost factor in continuing Nitham Valar Nithi Scheme and subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme with the bank as discussed at the State level Review Committee meeting and Board of Directors of the bank made review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs. 5 lakhs and accordingly, the Board of Directors decided to discontinue the scheme in the branches, where the Nitham Valar Nithi deposits outstanding is less than Rs. 5 lakhs. It is further contended in the Counter Statement that the Respondent/Bank is a public sector bank, which continues to incur heavy loss and that when the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches and that when the scheme is withdrawn, naturally the agents engaged purely on temporary and commission basis ceased to be engaged further and that was done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the

time of engaging the Petitioner. Hence, it cannot be considered as unreasonable, arbitrary, and in violation of the rights of the Petitioner. It is admitted that because of the decision taken by the Board of Directors of the Respondent/Bank Management Nitham Valar Nithi Scheme has been discontinued by the Respondent/Management when found that the Nitham Valar Nithi deposit outstanding was less than Rs. 5 lakhs and that scheme is not economically viable in those branches and in pursuance of the stoppage of the scheme, the Petitioners who were engaged as Nitham Valar Nithi deposit collection agents were non-employed by the Respondent/Bank. It is the contention of the Petitioner that it amounts to termination of service and hence the action of the Respondent/Management in terminating the services of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice and also a violation of Section 25F of Industrial Disputes Act. It is further contended that the Division Bench of High Court of Madras has held in a batch of Writ Appeal that *'the tiny deposit agent is a workman as defined in Section 2 (s) of the Industrial Disputes Act and he is not an independent contractor but part of the organisation.'* The Respondent would contend that Andhra Pradesh High Court in a decision reported in Vol 93 (1998) FJR 144 has held that tiny deposit agents (Nitham Valar Nithi agents) in bank are not workmen and as per the agency agreement, the bank shall also at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice as there is no provision in the agreement to pay compensation and to give notice to the Nitham Valar Nithi agent prior to the termination. There is no violation of section 25F of Industrial Disputes Act and that Nitham Valar Nithi agents are not workmen and the Petitioner cannot complain about the violation of Section 25F and other provisions of Industrial Disputes Act, 1947, since the action of the bank is valid. The question whether the tiny deposit collector for a bank as Nitham Valar Nithi agent is a workman or not has been decided by the Hon'ble Supreme Court in a case reported as (2001) 3 SCC pg. 36 **INDIAN BANK ASSOCIATION VS. WORKMEN SYNDICATE BANK**. In that case the Hon'ble Supreme Court has held that *'these deposit collectors are workmen within the meaning of section 2(s) of Industrial Disputes Act, 1947 and that as seen from Section 2(rr) of the Industrial Disputes Act, the commission received by the deposit collectors is nothing else but wage which is dependent on the productivity. This commission is paid for promoting the business of the various banks and that there is clearly a relationship of master and servant between the management and the deposit collector'*. So from this recent decision of the Hon'ble Supreme Court a quietus has been given to the issue whether the tiny deposit collector or Nitham Valar Nithi agent is a workman or not. The learned counsel for the Respondent also has fairly conceded that in view of this decision of the Supreme Court, the Petitioner can be considered as a workman under Industrial Disputes Act.

8. In this industrial dispute the Petitioner has questioned the action of the management of Pandyan Grama Bank in terminating his employment as Nitham Valar Nithi agent as unjustified for the reason that the Respondent/Management has not issued any prior notice of termination, notice pay or compensation which is a violation under section 25F of the Industrial Disputes Act. In the Claim Statement the Petitioner has further asked for the relief that

this Hon'ble Court may be pleased to set aside the order dated 2-3-95 and to direct the Respondent to reinstate the Petitioner into service with back wages, continuity of service and all other attendant benefits. In the above cited case, the Supreme Court has held that *'the persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work and that the mode of selection and qualification are not comparable to those of employees even though the employees may be doing similar work'*. In the present case, not only on the mode of selection and qualification not comparable, but even the work is comparable. The work which deposit collectors do is completely different from the work which the regular employees do. There was, thus, no question of absorption and there was also no question of the deposit collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the banks. So, in view of this decision of the Supreme Court, the Petitioner cannot claim to be reinstated in service of the Respondent/Bank. Further, in view of the discontinuation of Nitham Valar Nithi Scheme in the branch where it was found to be economically not viable by the Board of Directors of the Respondent/Bank, the post of Nitham Valar Nithi collection agents will not be available for the Petitioner to reinstate in service as Nitham Valar Nithi collection agent.

9. The Petitioner has requested this Court to pass an order to set aside the order dated 2-3-95 of the Respondent/Management like the order Ex. W 6 sent to the Manager of T.V. Managai branch. A perusal of this letter by Chairman to the Manager of Pandyan Grama Bank regarding stoppage of opening of any fresh Nitham Valar Nithi Scheme from 1-4-95 in certain branches of the bank was a decision taken by Board of Directors of the Respondent/Bank after reviewing the position of economic viability in continuing the scheme any further, where the amount outstanding under the scheme is less than Rs. 5 lakhs in certain branches. MW1 has also spoken to that effect in his evidence. No contra evidence has been let in by the Petitioner to arrive at a conclusion that the decision taken by the Board of Directors, after the discussion at the State level review committee meeting of the bank in respect of the function of Nitham Valar Nithi Scheme in the bank branches is wrong or incorrect. It is not disputed that the Respondent/Bank is a public sector bank and when the Respondent/Bank found this Nitham Valar Nithi Scheme as not economically viable by considering the cost of effectiveness of the scheme, it can take a decision to discontinue the same in the branches where the amount outstanding under the scheme is less than Rs. 5 lakhs. This action of the Respondent/Bank Management has been taken only in respect of the bank branches where it was found not economically viable to continue the scheme. So under such circumstances, the decision taken by the Respondent/Management and in pursuance of the same a circular has been issued under Ex. W6 cannot be said to be an incorrect and unjustifiable decision taken by the Respondent/Management. So, the question of setting aside the order dated 2-3-95 like Ex. W6 does not at all arise.

10. In view of the earlier discussion on the basis of the decision of the Supreme Court above cited, the Petitioner be considered as a workman under provision of the Industrial Disputes Act, so far as his engagement as tiny deposit collection agent under Nitham Valar Nithi Scheme for the bank branch. That being the position, the non-

employment of the Petitioner without any prior notice and compensation can be considered as a violation of Section 25 F of the Industrial Disputes Act, 1947 as it is contended by the learned counsel for the Petitioner. In the Counter Statement also, it is the contention of the Respondent/Management that as per the Andhra Pradesh High Court decision at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. Under such circumstances, it can be held that the Petitioner as Nitham Valar Nithi agent has been non-employed because of the stoppage of the scheme in the bank branch on the decision taken by the respondent/Management is entitled to get retrenchment compensation, as it is held by the Honble Supreme Court in a case reported as AIR 1980 SC 1219 BETWEEN SANTOSH GUPTA AND STATE BANK OF PATIALA. In that case, the Hon'ble Supreme Court has held that '*compensation shall be payable to workman, in case of closure of undertaking as if, the workman had been retrenched, as it is provided under section 25 (fff) of Industrial Disputes Act, 1947.*' It is further observed by the Hon'ble Supreme Court that *the manifest object of these provisions is to so compensate the workman for loss of employment as to provide him the where with all to subsist until he finds fresh employment.* This decision of the Hon'ble Supreme Court is quite applicable to the present facts of this case. Under such circumstances, it can be concluded that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner as Nitham Valar Nithi collection Agent is justified, but the Petitioner is entitled for retrenchment compensation under section 25 F of Industrial Disputes Act, 1947 Thus, the point is answered accordingly.

11. In the result, an Award is passed holding that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner Sri T. Chellam as Nitham Valar Nithi Collection Agent is justified. The Respondent/Management is directed to pay the Petitioner/Workman as retrenchment compensation, the amount equivalent to the amount he has earned as his commission for the period of one year immediately preceding to his non-employment No Cost.

(Dictated to the stenographer, transcribed and typed by him corrected and pronounced by me in the open court on this day the 28th March, 2002)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined in common for this case and the connected cases :—

For the Ist Party/Workman : WW 1 Sri T. Nelson
WW 2 Sri A. Guruviah
WW 3 Sri Sundarajan
WW 4 Sri A. Senthilvel
WW 5 Sri T. Chellan
WW 6 Sri M. Abdul Rajak
WW 7 Sri S. Jayamalai Perumal
WW 8 Sri Subburaj
WW 9 Sri A. L. Ramu
WW 10 Sri S. Raman

For the IInd Party/Management : MW 1 Sri S. Sangilipandi

Documents marked as Exhibits in common for this case and other connected cases :—

For the Ist Party/Workman :—

Ex. No.	Date	Description
W1	02-3-84	Xerox copy of the appointment letter issued to Sri A. Guruviah.
W2	Nil	Xerox copy of the identity card of Mr. R. Sankara Narayana Moorthy issued by the Respondant.
W3	Nil	Xerox copy of the S.B. passbook of Sri G. Subburaj
W4	21-06-85	Original agreement between Sri T. Nelson, workman and Respondent/Management.
W5	Nil	Xerox copy of the Nitham Valarnidhi Scheme.
W6	02-03-95	Xerox copy of the letter of the Chairman to the Manager, Pandyan Grama Bank regarding stoppage of Opening of any fresh non-deposit account from 1-4-95 In certain branches.
W 7	26-06-99	Xerox copy of the circular issued by the Chairman of Bank regarding profits accrued.

For the IInd Party/Management :—

Ex. No.	Date	Description
M1	31-01-95	Xerox copy of the daily collection list.
M2	01-02-95	Xerox copy of the sundry creditor cash voucher.
M3	01-11-95 to 07-11-95	Xerox copy of the weekly consolidation register.
M4	Nil	Xerox copy of the NVN a/c. No. 356 ledger extract.
M5	27-12-91	Xerox copy of the credit transfer voucher NVN A/c.
M6	27-12-91	Xerox copy of the debit cash voucher NVN. a/c. 92.
M7	27-12-91	Xerox copy of the NVN discharged receipt voucher.
M8	27-12-91	Xerox copy of the requisition letter for closure of NVN account No. 92.
M9	18-02-91	Xerox copy of the NVN specimen card No. 92.
M10	18-12-91	Xerox copy of the credit voucher for demand loan.
M11	18-12-91	Xerox copy of the debit cash voucher NVN Account.
M12	18-12-91	Xerox copy of the NVN discharged receipt.
M13	15-12-90	Xerox copy of the NVN Specimen Card.

M14	03-12-93	Xerox copy of the NVN agent S.B. A/c. No. 2149.
M15	Nil	Xerox copy of the guidelines for NVN scheme.
M16	Nil	Xerox copy of the rules regarding NVN Scheme.
M17	Nil	Xerox copy of the model of NVN agency agreement.
M18	Nil	Xerox copy of the letter of the Chairman to all Branches to discontinue NVN deposits with list of branches
M19	27-04-93	Xerox copy of the NVN cash receipt.
M20	Nil	Xerox copy of the NVN a/c Nos. 607 and 615 ledger copy.
M21	Nil	Xerox copy of the ledger copy of Mr. Nelson's S.B. Account No. 40
M22	22-02-95 to 02-03-95	Xerox copy of the weekly consolidation register
M23	Nil	Extract of S.B. account pertaining to Mr T. Nelson.

नई दिल्ली, 5 अप्रैल, 2002

का.आ. 1397.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पांडेयन ग्रामा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/लेबर कोर्ट चेन्नई के पंचाट (संदर्भ संख्या आई. डी. नं. 469/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-04-2002 को प्राप्त हुआ था।

[सं. एल-12012/58/97-आई.आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 5th April, 2002

S.O. 1397.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. ID. No. 469/2001) of the Central Government Industrial Tribunal-cum-Labour Court Chennai as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Pandyan Grama Bank and their workman, which was received by the Central Government on 04-04-2002.

[No L-12012/58/97-IR(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 28th March, 2002

PRESENT

K. KARTHIKEYAN, Presiding Officer

INDUSTRIAL DISPUTE No. 469/2001

(Tamil Nadu State Industrial Tribunal I. D. No. 11/98)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Sri S. Jayamalai Perumal and the Management of Pandyan Grama Bank, Virudhunagar..

BETWEEN

SRI S. Jayamalai Perumal : Ist Party/Workman

AND

The Chairman, : IInd Party/Management
Pandyan Grama Bank, Virudhunagar..

Appearance :

For the workman : M/s. P.V. S. Giridhar
Devi Shanker &
R. Srinivasan, Advocates

For the Management : M/s. Row & Reddy,
S. Vaidhyathan &
W. T. Prabakar, Advocates

The Govt. of India, Ministry of Labour in exercise of Powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No. L-12012/58/97/IR (B-I) dated 02-01-98.

2. This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, Chennai where it was taken on file as I.D. No. 11/98. When the matter was pending enquiry in that Tribunal, the Government of India, Ministry of labour was pleased to order transfer of this case from that tribunal to this tribunal for adjudication. On receipt of records from that Tamil Nadu State Industrial Tribunal, the case has been taken on file as I.D. No. 469/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 01-03-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case by filing their Claim Statement and Counter Statement respectively.

3. When the matter came up before me for final hearing on 14-02-2002, upon perusing the Claim Statement, Counter Statement, the other material papers on record, the oral and documentary evidence let in on either side, and after hearing the arguments advanced by the learned counsel on either side, this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows :—

“Whether the action of the Management of Pandyan Grama Bank in terminating the employment of Sri S. Jayamalai Perumal is justified? If not, what relief the concerned workman is entitled to?”

4. The averments in the Claim Statement of the I Party/Workman Shri S. Jayamalai Perumal (hereinafter refers to as Petitioner) are briefly as follows:-

The Petitioner was appointed as a commission agent in the II Party/Management Pandyan Grama Bank (hereafter refers to as Respondent) as part of a scheme called Nitham Valar Nithi Scheme, by an order of appointment dated 30-04-1985. He was appointed as collection agent on prior approval of the Head Office by signing an agreement with the Respondent/Bank. He had furnished a security deposit of Rs. 1000/-. He was paid commission on the collection made by him at the rate of 3 %. He should remit the entire collection made on the previous day into the bank before the banking hours on the next day. If he fails to do so, he will loose 50% of the commission on the amount collected and in case of default exceeding one day, he will loose the entire commission. The workman is taken to task, when any depositor closes the account within a period of six months to twenty four months from the date of opening of the said account. There will be a reduction of the commission payable to the agent in that event. For all acts of commission and omission of the nominee, the collection agent will be responsible and answerable to the bank. The respondent has issued a letter to the Manager dated 2-3-95 not allowing to open new accounts, if the deposit on the head of 'NVN' account is less than five lakhs. Thus, the number of accounts dwindled with consequent decrease in the earning of the deposit collectors. As such, the Respondents have failed to give work to the Petitioner. Hence, this action of the Respondent in terminating the service of the Petitioner indirectly without giving reasons is arbitrary and unreasonable. The Petitioner filed a petition before the Assistant Labour Commissioner on conciliation seeking to reinstate the Petitioner with back wages and continuity of service. On failure of conciliation efforts taken by the Assistant Labour Commissioner, he submitted a failure of conciliation report to the Government, which in turn referred this matter as an industrial dispute for adjudication by this Tribunal. The impugned order is arbitrary and unreasonable and violative of the Petitioner's rights under Article 14, 16 and 21 of the Constitution. The Division Bench of High Court Madras, in a batch of appeals has held that there is sufficient control over the work of Tiny Deposit Agents by the bank, that the Tiny Deposit Agent is a workman as defined in section 2(2) of the Industrial Disputes Act and that such a Tiny Deposit Agent is not an independent contractor but part of the organisation. Though in the letter of appointment issued by the bank to the Petitioner, commission was fixed payable to the Petitioner at 3% on the total collection made by the Petitioner each month, clause 16 of the agreement provided that the commission could be determined by the bank time to time. As per rule of the scheme, opening of the account should be done only after the supervisory official authorises the same, though the collecting agent is permitted to receive deposits from door to door. This is an important circumstances which shows that the collecting agent is not an independent contractor so as to enrol customers of the bank on his own. The Tiny Deposit Agent is undoubtedly engaged in the business of the bank i.e. the deposit mobilisation. The remuneration of the Tiny Deposit Agent is fixed in the agreement. Though it is called commission, it will still be remuneration as defined by the decisions of the Supreme Court as well as the definition of the wages in the Industrial Disputes Act. The

nature of work of the Petitioner demands daily attendance in bank and deposit of the collections made by him on the previous day. The Petitioner has to do some clerical work as he is bound to fill up relevant forms, ledgers, pass books, etc. The Petitioner should furnish a security deposit of Rs. 1000/- which will be placed in fixed deposit for a minimum period of three years. The bank can instruct the agent not to enroll new subscribers at any time. The provision enabling the agent to terminate the agency on giving the bank a month's notice is the circumstances, which goes to show that it is a contract of service. The impugned order of the Respondent does not allow the workmen to open a fresh account under 'NVN' scheme and thereby terminated the services of the Petitioner. The action of the Respondent in terminating the service of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice. The action of the Respondent in terminating the service of the Petitioner is violative of Chapter VA and Chapter VB particularly section 25F of the Industrial Disputes Act. No notice has been served prior to the issuance of the said order, nor was retrenchment compensation paid. The Govt. Ministry of Finance issued a directive not to wind up the said scheme. Many of the nationalised banks which were virtually winding up the said scheme restored it. Therefore, it is prayed that this Hon'ble Court may be pleased to set aside the impugned order dated 2-3-95 and direct the Respondent to reinstate the Petitioner in service with back wages, continuity of service and all other attendance benefits.

5. The averments in the Counter Statement filed by the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) are briefly as follows:—

The Petitioner was engaged as Nitham Valar Nithi Scheme agent from 30-04-1985. Unlike the regular employees of the bank, he was not paid salary. He was paid only commission depending upon the amount of deposit collected. Unlike the regular bank employees he was not required to attend the bank daily or sign the attendance register. He was not required to attend to any other work in the bank. His work consisted in collecting tiny deposits and deposit them into the bank the next day. He may not be doing collection work not more than twice a week. He is governed by the Agency agreement. Unlike other employees, he was not subject to the disciplinary control of the bank and there are not fixed hours of work. The Nitham Valar Nithi Scheme was in operation in the Respondent/Bank since 1979. During State Level Review Committee meeting convened by NABARD on 10-01-95 at Madras, this matter was discussed and the Respondent was advised to review the cost factor in continuing Nitham Valar Nithi Scheme. Subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme in the bank as discussed at the State Level Review Committee meeting. On that basis, the Board of Directors of the bank made a review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs. 5,00,000/-. Accordingly, the bank during the Board of Directors' meeting held in February, 1995 decided to discontinue the scheme at the branches, where Nitham Valar Nithi Scheme deposit outstanding was less than Rs. 5 lakhs. When this was implemented, the outstanding under Nitham Valar Nithi Scheme in Chockampatti branch was less than Rs. 5 lakhs. Moreover, the agency agreement

entered into between the bank and the Petitioner clearly states that the bank shall also be at liberty to terminate the agency any time without assigning any reason whatsoever. The Respondent/Bank is a public sector bank which continues to incur heavy loss. When the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches. When the scheme is withdrawn naturally the agent engaged purely on temporary and commission basis ceased to be engaged further. This has been done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. This by no stretch of imagination can be considered unreasonable arbitrary and violative of rights of the Petitioner. NVN rules provides that the depositor may open the account through the collection agent authorised by the bank in this behalf. Thus, it is clear that the Nitham Valar Nithi agent is free to open an Nitham Valar Nithi account on his own. The Nitham Valar Nithi agents were not the employees of the bank as their relationship with the bank was only that of contract for service and not contract of service. Nitham Valar Nithi agents need not comply with the minimum conditions stipulated for recruitment as employees of the bank such as age, qualification etc. They were engaged purely on commission basis. Even though, he attended collection work in a day, but no collection is effected he would not be paid commission for that day. So, the commission cannot be treated as wages. Quite recently, the Andhra Pradesh High Court has held in a case that tiny deposit collectors/ Nitham Valar Nithi agents in bank are not workmen. The Nitham Valar Nithi agents come to the branch only when they have to remit the amount they collected towards Nitham Valar Nithi Scheme. He has to fill up only specific forms such as list of accounts in which he had made collection and enter the amount collected in the pass book. Though Nitham Valar Nithi agents were authorised to enter in the passbook, it is not authoritative and it is subject to verification by the bank with the Nitham Valar Nithi ledger. Nitham Valar Nithi agents was not required to attend any other work in the bank. Nitham Valar Nithi agents are not workmen, even assuming so they cannot complain about violation of Section 25F and other provisions of the Industrial Disputes Act, 1947 as the action of the bank is valid as per section 2(o) 2(bb) of the Industrial Disputes Act, 1947. The Petitioner has signed the agreement wherein stipulation No. 5 of the agency agreement states that the bank shall also be at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice. There is no provision in agency agreement saying that notice should be issued to Nitham Valar Nithi agents prior to their termination and also there is no provision in the agreement to pay compensation. Hence, there is no violation of section 25F of the Industrial Disputes Act, 1947. In any event, he cannot claim reinstatement because there was no post of Nitham Valar Nithi agent. It was only an agency between the Petitioner and the bank and the scheme came to be abolished as far as Chockampatti branch is concerned. That is why, the Andhra Pradesh High Court has held at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. For all the reasons mentioned it is prayed that this Hon'ble Tribunal may be pleased to pass an award rejecting the claim of the Petitioner with cost.

6. When the matter was taken up finally for enquiry, the learned counsel appearing on either side represented that a joint trial can be held for this case along with the other similar cases, 13 in number. The evidence let in on either side both oral and documentary can be treated as a common evidence in all these 14 cases. As per their request, a joint trial has been conducted and evidence recorded in these cases along with other cases have been treated as common evidence on either side. Out of the fourteen petitioners of these fourteen cases, ten have been examined as WW1 to WW10 and on the side of the management one common witness has been examined as MW1. For the Petitioner/ Workmen seven documents have been marked as Ex. W1 to W7 and for the management twenty three documents have been marked as Ex. M1 to M23 as common documentary evidence in all these cases. The arguments advanced by the learned counsel on either side was heard.

7. The point for my consideration is—

“Whether the action of the Management of Pandyan Grama Bank in terminating the employment of Sri S. Jayamalai Perumal is justified? If not, what relief the concerned workman is entitled to?”

Point :—

The Petitioner Sri S. Jayamalai Perumal has been employed by the management of Pandyan Grama Bank as an agent for collecting amounts from the depositors towards Nitham Valar Nithi, a deposit Scheme introduced by the Respondent/Bank. For that the Petitioner had entered into an agreement with the Respondent/Bank. The Petitioner, as an agent for collecting amount as tiny deposits from the depositors under the said scheme, has to deposit the collected amount into the bank next day. The Petitioner was engaged as such by the Respondent/Bank on commission basis. It is the admission of the Petitioner that he was paid commission on the collection made by him at the rate of 3%. The zerox copy of the S.B. passbook of the Petitioner wherein the payment of his commission has been credited. The Petitioner was engaged for the Chockampatti branch of the Respondent/Bank as a collection agent for tiny deposits under Nitham Valar Nithi Scheme. The Respondent/Management had sent a letter dated 2-3-95 to the Managers of certain branches of the Respondent/Bank informing that as per the advice given by NABARD in the meeting held on 10-1-95 at Madras, the Board of Management of Respondent/Bank has also resolved to discontinue the Nitham Valar Nithi Scheme in the branches, where the outstanding is less than Rs. 5,00,000 as on 31-1-95 and advice the branch not to open any fresh Nitham Valar Nithi account from 1-4-95 and to continue the existing Nitham Valar Nithi accounts in the maturity/closure of period/accounts. The zerox copy of that letter sent to the Manager of Koomapatti branch of Pandyan Grama Bank is Ex. W 6 as it is sent to Chockampatti branch. In pursuance of the same, the Manager of the said branch of the Respondent/Bank, informed, the Petitioner, a collecting agent under Nitham Valar Nithi Scheme not to open new accounts and thereby the Petitioner was not given work by the Respondent/Bank. This non-employment of the Petitioner has been mentioned by the Petitioner in his Claim Statement as termination of his service indirectly without giving reasons and it is arbitrary and unreasonable. It is the contention of the Respondent/Management in their Counter Statement that during state level review committee meeting convened by NABARD on 10-1-95 at Madras, the

matter was discussed and the management of the Respondent/Bank was advised to review the cost factor in continuing Nitham Valar Nithi Scheme and subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme with the bank as discussed at the State level Review Committee meeting and Board of Directors of the bank made review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs. 5 lakhs and accordingly, the Board of Directors decided to discontinue the scheme in the branches, where the Nitham Valar Nithi deposits outstanding is less than Rs. 5 lakhs. It is further contended in the Counter Statement that the Respondent/Bank is a public sector bank, which continues to incur heavy loss and that when the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches and that when the scheme is withdrawn, naturally the agents engaged purely on temporary and commission basis ceased to be engaged further and that was done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. Hence, it cannot be considered as unreasonable, arbitrary, and in violation of the rights of the Petitioner. It is admitted that because of the decision taken by the Board of Directors of the Respondent/Bank Management Nitham Valar Nithi Scheme has been discontinued by the Respondent/Management when found that the Nitham Valar Nithi deposit outstanding was less than Rs. 5 lakhs and that scheme is not economically viable in those branches and in pursuance of the stoppage of the scheme, the Petitioners who were engaged as Nitham Valar Nithi deposit collection agents were non-employed by the Respondent/Bank. It is the contention of the Petitioner that it amounts to termination of service and hence the action of the Respondent/Management in terminating the services of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice and also a violation of Section 25F of Industrial Disputes Act. It is further contended that the Division Bench of High Court of Madras has held in a batch of Writ Appeal that *'the tiny deposit agent is a workman as defined in Section 2(s) of the Industrial Disputes Act and he is not an independent contractor but part of the organisation.'* The Respondent would contend that Andhra Pradesh High Court in a decision reported in Vol. 93 (1998) FJR 144 has held that tiny deposit agents (Nitham Valar Nithi agents) in bank are not workmen and as per the agency agreement, the bank shall also at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice as there is no provision in the agreement to pay compensation and to give notice to the Nitham Valar Nithi agent prior to the termination. There is no violation of section 25F of Industrial Disputes Act and that Nitham Valar Nithi agents are not workmen and the Petitioner cannot complaint about the violation of Section 25F and other provisions of Industrial Disputes Act, 1947, since the action of the bank is valid. The question whether the tiny deposit collector for a bank as Nitham Valar Nithi agent is a workman or not has been decided by the Hon'ble Supreme Court in a case reported as (2001) 3 SCC pg. 36 INDIAN BANK ASSOCIATION VS. WORKMEN SYNDICATE BANK. In that case the Hon'ble Supreme Court has held that *'these deposit collectors are*

workmen within the meaning of section 2(s) of Industrial Disputes Act, 1947 and that as seen from Section 2(rr) of the Industrial Disputes Act, the commission received by the deposit collectors is nothing else but wage which is dependent on the productivity. This commission is paid for promoting the business of the various banks and that there is clearly a relationship of master and servant between the management and the deposit collectors'. So from this recent decision of the Hon'ble Supreme Court a quietus has been given to the issue whether the tiny deposit collector or Nitham Valar Nidhi agent is a workman or not. The learned counsel for the Respondent also has fairly conceded that in view of this decision of the Supreme Court, the Petitioner can be considered as a workman under Industrial Disputes Act.

8. In this industrial dispute the Petitioner has questioned the action of the management of Pandyan Grama Bank in terminating his employment as Nitham Valar Nithi agent as unjustified for the reason that the Respondent/Management has not issued any prior notice of termination, notice pay or compensation which is a violation under section 25F of the Industrial Disputes Act. In the Claim Statement the Petitioner has further asked for the relief that this Hon'ble Court may be pleased to set aside the order dated 2-3-95 and to direct the Respondent to reinstate the Petitioner into service with back wages, continuity of service and all other attendant benefits. In the above cited case, the Supreme Court has held that *'the persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work and that the mode of selection and qualification are not comparable to those of employees even though the employees may be doing similar work'.* In the present case, not only on the mode of selection and qualification not comparable, but even the work is comparable. The work which deposit collectors do is completely different from the work which the regular employees do. There was, thus, no question of absorption and there was also no question of the deposit collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the banks. So, in view of this decision of the Supreme Court, the Petitioner cannot claim to be reinstated in service of the Respondent/Bank. Further, in view of the discontinuation of Nitham Valar Nithi Scheme in the branch where it was found to be economically not viable by the Board of Directors of the Respondent/Bank, the post of Nitham Valar Nidhi collection agents will not be available for the Petitioner to reinstate in service as Nitham Valar Nithi collection agent.

9. The Petitioner has requested this Court to pass an order to set aside the order dated 2-3-95 of the Respondent/Management like the order Ex. W 6 sent to the Manager of Chockampatti branch. A perusal of this letter by Chairman to the Manager of Pandyan Grama Bank regarding stoppage of opening of any fresh Nitham Valar Nithi accounts from 1-4-95 in certain branches of the bank was a decision taken by Board of Directors of the Respondent/Bank after reviewing the position of economic viability in continuing the scheme any further, where the amount outstanding under the scheme is less than Rs. 5 lakhs in certain branches. MW1 has also spoken to that effect in his evidence. No contra evidence has been let in by the Petitioner to arrive at a conclusion that the decision taken by the Board of Directors, after the discussion at the State level review committee meeting of the bank in respect of

the function of Nitham Valar Nidhi Scheme in the bank branches is wrong or incorrect. It is not disputed that the Respondent/Bank is a public sector bank and when the Respondent/Bank found this Nitham Valar Nidhi Scheme as not economically viable by considering the cost of effectiveness of the scheme, it can take a decision to discontinue the same in the branches where the amount outstanding under the scheme is less than Rs. 5 lakhs. This action of the Respondent/Bank Management has been taken only in respect of the bank branches where it was found not economically viable to continue the scheme. So under such circumstances, the decision taken by the Respondent/Management and in pursuance of the same a circular has been issued under Ex. W6 cannot said to be an incorrect and unjustifiable decision taken by the Respondent/Management. So, the question of setting aside the order dated 2-3-95 like Ex. W6 does not at all arise.

10. In view of the earlier discussion on the basis of the decision of the Supreme Court above cited, the Petitioner can be considered as a workman under provisions of the Industrial Disputes Act, so far as his engagement as tiny deposit collection agent under Nitham Valar Nidhi Scheme for the bank branch. That being the position, the non-employment of the Petitioner without any prior notice and compensation can be considered as a violation of Section 25 F of the Industrial Disputes Act, 1947 as it is contended by the learned counsel for the Petitioner. In the Counter Statement also, it is the contention of the Respondent/Management that as per the Andhra Pradesh High Court decision at the worst all Nitham Valar Nidhi agents can be awarded compensation and not reinstatement. Under such circumstances, it can be held that the Petitioner as Nitham Valar Nidhi agent has been non-employed because of the stoppage of the scheme in the bank branch on the decision taken by the Respondent/Management is entitled to get retrenchment compensation, as it is held by the Hon'ble Supreme Court in a case reported as AIR 1980 SC 1219 BETWEEN SANTOSH GUPTA AND STATE BANK OF PATIALA. In that case, the Hon'ble Supreme Court has held that *'compensation shall be payable to workman, in case of closure of undertaking as if, the workman had been retrenched, as it is provided under section 25 (fff) of industrial Disputes Act, 1947'* It is further observed by the Hon'ble Supreme court that *'the manifest object of these provisions is to so compensate the workman for loss of employment as to provide him the where with all to subsist until he finds fresh employment.'* This decision of the Hon'ble Supreme Court is quite applicable to the present facts of this case. Under such circumstances, it can be concluded that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner as Nitham Valar Nidhi Collection Agent is justified, but the Petitioner is entitled for retrenchment compensation under section 25 F of Industrial Disputes Act, 1947 Thus, the point is answered accordingly.

11. In the result, an Award is passed holding that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner Sri S. Jayamalai Perumal as Nitham Valar Nidhi Collection Agent is justified. The Respondent/Management is directed to pay the Petitioner/Workman as retrenchment compensation, the amount equivalent to the amount he has earned as his commission for the period of one year immediately preceding to his non-employment. No Cost.

(Dictated to the stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28th March, 2002)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined in common for this case and the connected cases :—

For the Ist Party/Workman : WW I Sri T. Nelson

WW 2 Sri A. Guruviah

WW 3 Sri Soundarajan

WW 4 Sri A. Senthilvel

WW 5 Sri T. Chellan

WW 6 Sri M. Abdul Rajak

WW 7 Sri S. Jayamalai Perumal

WW 8 Sri Subburaj

WW 9 Sri A. L. Ramu

WW 10 Sri S. Raman

For the IInd Party/Management : MW 1 Sri S. Sangilipandi

Documents marked as Exhibits in common for this case and other connected cases:—

For the Ist Party/Workman :—

Ex. No.	Date	Description
W1	02-3-84	Xerox copy of the appointment letter issued to Sri A. Guruviah
W2	Nil	Xerox copy of the identity card of Mr R. Sankara Narayana Moorthy issued by the Respondant
W3	Nil	Xerox copy of the S.B. passbook of Sri G. Subburaj
W 4	21-06-85	Original agreement between Sri T. Nelson, workman and Respondent/Management
W 5	Nil	Xerox copy of the Nitham Valarnidhi Scheme
W 6	02-03-95	Xerox copy of the letter of the Chairman to the Manager, Pandyan Grama Bank regarding stoppage of Opening of any fresh non-deposit account from 1-4-95 in certain branches.
W 7	26-06-99	Xerox copy of the circular issued by the Chairman of bank regarding profits accrued.

For the II Party/Management :—

Ex. No.	Date	Description
M1	31-01-95	Xerox copy of the daily collection list.
M2	01-02-95	Xerox copy of the sundry creditor cash voucher
M3	01-11-95 to 07-11-95	Xerox copy of the weekly consolidation register

M4	Nil	Xerox copy of the NVN A/c No 356 ledger extract
M5	27-12-91	Xerox copy of the credit transfer voucher NVN A/c
M6	27-12-91	Xerox copy of the debit cash voucher NVN A/c 92
M7	27-12-91	Xerox copy of the NVN discharged receipt voucher
M8	27-12-91	Xerox copy of the requisition letter for closure of NVN account No 92
M9	18-02-91	Xerox copy of the NVN specimen card No 92
M10	18-12-91	Xerox copy of the credit voucher for demand loan
M11	18-12-91	Xerox copy of the debit cash voucher NVN Account
M12	18-12-91	Xerox copy of the NVN discharged receipt
M13	15-12-90	Xerox copy of the NVN Specimen card
M14	03-12-93	Xerox copy of the NVN agent S B A/c No 2149
M15	Nil	Xerox copy of the guidelines for NVN scheme
M16	Nil	Xerox copy of the rules regarding NVN Scheme
M17	Nil	Xerox copy of the model of NVN agency agreement
M18	Nil	Xerox copy of the letter of the Chairman to all Branches to discontinue NVN deposits with list of branches
M19	27-04-93	Xerox copy of the NVN cash receipt
M20	Nil	Xerox copy of the NVN A/c No 607 and 615 ledger copy
M21	Nil	Xerox copy of the ledger copy of Mr Nelson's S B Account No 40
M22	22-02-95 to 02-03-95	Xerox copy of the weekly consolidation register
M23	Nil	Extract of S B account pertaining to Mr T Nelson

नई दिल्ली, 5 अप्रैल, 2002

का.आ. 1398.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पांडेयन ग्रामा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/लेबर कोर्ट चेन्नई के पंचाट (संदर्भ संख्या आई. डी. 465/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-04-2002 को प्राप्त हुआ था।

[सं. एल-12012/59/97-आई आर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 5th April, 2002

S.O. 1398.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref No ID No 465/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the industrial dispute between the employers in relation to the management of Pandyan Grama Bank and their workman, which was received by the Central Government on 04-04-2002

[No L-12012/59/97-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 28th March, 2002

PRESENT

K. KARTHIKEYAN, Presiding Officer

INDUSTRIAL DISPUTE No 465/2001

(Tamil Nadu State Industrial Tribunal I D No 6/98)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Sri A L Ramu and the Management of Pandyan Grama Bank, Virudhunagar

BETWEEN

Sri A L Ramu

I Party/Workman

AND

The Chairman,
Pandyan Grama Bank,
Virudhunagar

II Party, Management

APPEARANCES

For the Workman

M/s P V S Giridhar
Devi Shanker &
R Srinivasan,
Advocates

For the Management

M/s Row & Reddy,
S Vaidyanathan &
W T Parabakar,
Advocates

The Govt of India, Ministry of Labour, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No L-12012/59/97/IR (B-I), dated 02-01-98

2 This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, Chennai where it was taken on file as I D No 6/98. When the matter was pending enquiry in that Tribunal, the Government of India, Ministry

of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tamil Nadu State Industrial Tribunal, the case has been taken on file, as I.D. No. 465/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 01-03-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case by filing their Claim Statement and Counter Statement respectively.

3. When the matter came up before me for final hearing on 14-02-2002, upon perusing the Claim Statement, Counter Statement, the other material papers on record, the oral and documentary evidence let in on either side, and after hearing the arguments advanced by the learned counsel on either side, this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt for adjudication by this Tribunal is as follows :—

“Whether the action of the Management of Pandyan Grama Bank in terminating the employment of Sri A. L. Ramu is justified if not, what relief the concerned workman is entitled to ?”

4. The averments in the Claim Statement of the I Party/ Workman Sri A. L. Ramu (hereinafter refers to as Petitioner) are briefly as follows :—

The Petitioner was appointed as a commission agent in the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) as part of a scheme called Nitham Valar Nithi Scheme, by an order of appointment dated 11-02-1985. He was appointed as collection agent on prior approval of the Head Office by signing an agreement with the Respondent/Bank. He had furnished a security deposit of Rs 1000/-. He was paid commission on the collection made by him at the rate of 3%. He should remit the entire collection made on the previous day into the bank before the banking hours on the next day. If he fails to do so, he will lose 50% of the commission on the amount collected and in case of default exceeding on day, he will lose the entire commission. The workman is taken to task, when any depositor closes the account within a period of six months to twenty four months from the date of opening of the said account. There will be a reduction of the commission payable to the agent in that event. For all acts of commission and omission of the nominee, the collection agent will be responsible and answerable to the bank. The Respondent has issued a letter to the Manager dated 2-3-95 not allowing to open new accounts, if the deposit on the head of ‘NVN’ account is less than five lakhs. Thus, the number of accounts dwindled with consequent decrease in the earning of the deposit collectors. As such, the Respondents have failed to give work to the Petitioner hence this action of the Respondent in terminating the service of the Petitioner indirectly without giving reasons is arbitrary and unreasonable. The Petitioner filed a petition before the Assistant Labour Commissioner on conciliation seeking to reinstate the

Petitioner with back wages and continuity of service. On failure of conciliation efforts taken by the Assistant Labour Commissioner, he submitted a failure of conciliation report to the Government, which in turn referred this matter as an industrial dispute for adjudication by this Tribunal. The impugned order is arbitrary and unreasonable and violative of the Petitioner's rights under Article 14, 16 and 21 of the Constitution. The Division Bench of High Court Madras, in a batch of appeals has held that there is sufficient control over the work of Tiny Deposit Agents by the bank, that the Tiny Deposit Agent is a workman as defined in section 2(2) of the Industrial Disputes Act and that such a Tiny Deposit Agent is not an independent contractor but part of the organisation. Though in the letter of appointment issued by the bank to the Petitioner, commission was fixed payable to the Petitioner at 3% on the total collection made by the Petitioner each month, clause 16 of the agreement provided that the commission could be determined by the bank time to time. As per rule of the scheme, opening of the account should be done only after the supervisory official authorises the same, though the collecting agent is permitted to receive deposits from door to door. This is an important circumstance which shows that the collecting agent is not an independent contractor so as to enrol customers of the bank on his own. The Tiny Deposit Agent is undoubtedly engaged in the business of the bank i.e. the deposit mobilisation. The remuneration of the Tiny Deposit Agent is fixed in the agreement. Though it is called commission, it will still be remuneration as defined by the decisions of the Supreme Court as well as the definition of the wages in the Industrial Disputes Act. The nature of work of the Petitioner demands daily attendance in bank and deposit of the collections made by him on the previous day. The Petitioner has to do some clerical work as he is bound to fill up relevant forms, ledgers, pass books, etc. The Petitioner should furnish a security deposit of Rs 1000/- which will be placed in fixed deposit for a minimum period of three years. The bank can instruct the agent not to enroll new subscribers at any time. The provision enabling the agent to terminate the agency on giving the bank a month's notice is the circumstances, which goes to show that it is a contract of service. The impugned order of the Respondent does not allow the workmen to open a fresh account under ‘NVN’ scheme and thereby terminated the services of the Petitioner. The action of the Respondent in terminating the service of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice. The action of the Respondent in terminating the service of the Petitioner is violative of Chapter VA and Chapter VB particularly section 25F of the Industrial Disputes Act. No notice has been served prior to the issuance of the said order, nor was retrenchment compensation paid. The Govt. Ministry of Finance issued a directive not to wind up the said scheme. Many of the nationalised banks which were virtually winding up the said scheme restored it. Therefore, it is prayed that this Hon'ble Court may be pleased to set aside the impugned order dated 2-3-95 and direct the Respondent to reinstate the Petitioner in service with back wages, continuity of service and all other attendant benefits.

5. The averments in the Counter Statement filed by the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) are briefly as follows :—

The Petitioner was engaged as Nitham Valar Nithi Scheme agent from 11-02-1985. Unlike the regular

employees of the bank, he was not paid salary. He was paid only commission depending upon the amount of deposit collected. Unlike the regular bank employees he was not required to attend the bank daily or sign the attendance register. He was not required to attend to any other work in the bank. His work consisted in collecting tiny deposits and deposit them into the bank the next day. He may not be doing collection work not more than twice a week. He is governed by the Agency agreement. Unlike other employees, he was not subject to the disciplinary control of the bank and there are no fixed hours of work. The Nitham Valar Nithi Scheme was in operation in the Respondent/Bank since 1979. During State Level Review Committee meeting convened by NABARD on 10-01-95 at Madras, this matter was discussed and the Respondent was advised to review the cost factor in continuing Nitham Valar Nithi Scheme. Subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme in the bank as discussed at the State Level Review Committee meeting. On that basis, the Board of Directors of the bank made a review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs. 5,00,000/- Accordingly, the bank during the Board of Directors' meeting held in February, 1995 decided to discontinue the scheme at the branches, where Nitham Valar Nithi Scheme deposit outstanding was less than Rs. 5 lakhs. When this was implemented, the outstanding under Nitham Valar Nithi Scheme in Kallupatti branch was less than Rs. 5 lakhs. Moreover, the agency agreement entered into between the bank and the Petitioner clearly states that the bank shall also be at liberty to terminate the agency any time without assigning any reason whatsoever. The Respondent/Bank is a public sector bank which continues to incur heavy loss. When the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches. When the scheme is withdrawn naturally the agent engaged purely on temporary and commission basis ceased to be engaged further. This has been done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. This by no stretch of imagination can be considered unreasonable, arbitrary and violative of rights of the Petitioner. NVN rules provides that the depositor may open the account through the collection agent authorised by the bank in this behalf. Thus, it is clear that the Nitham Valar Nithi agent is free to open an Nitham Valar Nithi account on his own. The Nitham Valar Nithi agents were not the employees of the bank as their relationship with the bank was only that of contract for service and not contract of service. Nitham Valar Nithi agents need not comply with the minimum conditions stipulated for recruitment as employees of the bank such as age, qualification etc. They were engaged purely on commission basis. Even though, he attended collection work in a day, but no collection is effected he would not be paid commission for that day. So, the commission cannot be treated as wages. Quite recently, the Andhra Pradesh High Court has held in a case that tiny deposit collectors/Nitham Valar Nithi agents in bank are not workmen. The Nitham Valar Nithi agents come to the branch only when they have to remit the amount they collected towards Nitham Valar Nithi Scheme. He has to fill up only specific forms such as list of accounts in which he had made collection and enter the amount collected in the

pass book. Though Nitham Valar Nithi agents were authorised to enter in the passbook, it is not authoritative and it is subject to verification by the bank with the Nitham Valar Nithi ledger. Nitham Valar Nithi agent was not required to attend any other work in the bank. Nitham Valar Nithi agents are not workmen, even assuming so they cannot complain about violation of Section 25F and other provisions of the Industrial Disputes Act, 1947 as the action of the bank is valid as per section 2(o), 2(bb) of the Industrial Disputes Act, 1947. The Petitioner has signed the agreement wherein stipulation No. 5 of the agency agreement states that the bank shall also be at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice. There is no provision in agency agreement saying that notice should be issued to Nitham Valar Nithi agents prior to their termination and also there is no provision in the agreement to pay compensation. Hence, there is no violation of Section 25F of the Industrial Disputes Act, 1947. In any event, he cannot claim reinstatement because there was no post of Nitham Valar Nithi agent. It was only an agency between the Petitioner and the bank and the scheme came to be abolished as far as Kallupatti branch is concerned. That is why, the Andhra Pradesh High Court has held at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. For all the reasons mentioned it is prayed that this Hon'ble Tribunal may be pleased to pass an award rejecting the claim of the Petitioner with cost.

6. When the matter was taken up finally for enquiry, the learned counsel appearing on either side represented that a joint trial can be held for this case along with the other similar cases, 13 in number. The evidence let in on either side both oral and documentary can be treated as a common evidence in all these 14 cases. As per their request, a joint trial has been conducted and evidence recorded in these cases along with other cases have been treated as common evidence on either side. Out of the fourteen petitioners of these fourteen cases, ten have been examined as WW1 to WW10 and on the side of the management one common witness has been examined as MW1. For the Petitioner/Workmen seven documents have been marked as Ex. W1 to W7 and for the management twenty three documents have been marked as Ex. M1 to M23 as common documentary evidence in all these cases. The arguments advanced by the learned counsel on either side was heard.

7. The Point for my consideration is—

“Whether the action of the Management of Pandyan Grama Bank in terminating the employment of Sri A. L. Ramu is justified? If not, what relief the workmen is entitled to?”

Point :—

The Petitioner Sri A.L. Ramu has been employed by the management Pandyan Grama Bank as an agent for collecting amounts from the depositors towards Nitham Valar Nithi, a deposit Scheme introduced by the Respondent/Bank. For that the Petitioner had entered into an agreement with the Respondent/Bank. The Petitioner, as an agent for collecting amount as tiny deposits from the depositors under the said scheme, has to deposit the collected amount into the bank next day. The Petitioner

was engaged as such by the Respondent/Bank on commission basis. It is the admission of the Petitioner that he was paid commission on the collection made by him at the rate of 3%. The xerox copy of the S B passbook of the Petitioner wherein the payment of his commission has been credited, the Petitioner was engaged for the Kallupatti branch of the Respondent/Bank as a collection agent for tiny deposits under Nitham Valar Nithu Scheme. The Respondent/Management had sent a letter dated 2-3-95 to the Managers of certain branches of the Respondent/Bank informing that as per the advice given by NABARD in the meeting held on 10-1-95 at Madras, the Board of Management of Respondent/Bank has also resolved to discontinue to Nitham Valar Nithu Scheme in the branches where the outstanding is less than Rs. 5 00 000/- as on 31-3-95 and advise the branch not to open any fresh Nitham Valar Nithu account from 1-4-95 and to continue the existing Nitham Valar Nithu accounts in the maturity/closure of period/ accounts. The xerox copy of that letter sent to the Manager of Koomapatti branch of Pandyan Grama Bank is Ex. W6 as it is sent to Kallupatti branch. In pursuance of the same, the Manager of the said branch of the Respondent/Bank informed the Petitioner, a collecting agent under Nitham Valar Nithu Scheme, not to open new accounts and thereby the Petitioner was not given work by the Respondent/Bank. This non-employment of the Petitioner has been mentioned by the Petitioner in his Claim Statement as termination of his service indirectly without giving reasons and it is arbitrary and unreasonable. It is the contention of the Respondent/Management in their Counter Statement that during state level review committee meeting convened by NABARD on 10-1-95 at Madras, the matter was discussed and the management of the Respondent/Bank was advised to review the cost factor in continuing Nitham Valar Nithu Scheme and subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithu Scheme with the bank as discussed at the State level Review Committee meeting and Board of Directors of the bank made review of the scheme and found that the scheme is not economically viable in respect of the branches where the amount outstanding under the scheme is less than Rs. 5 lakhs and accordingly, the Board of Directors decided to discontinue the scheme in the branches where the Nitham Valar Nithu deposits outstanding is less than Rs. 5 lakhs. It is further contended in the Counter Statement that the Respondent/Bank is a public sector bank which continues to incur heavy loss and that when the Nitham Valar Nithu Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches and that when the scheme is withdrawn, naturally, the agents engaged purely on temporary and commission basis ceased to be engaged further and that was done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithu agent at the time of engaging the Petitioner. Hence, it cannot be considered as unreasonable, arbitrary, and in violation of the rights of the Petitioner. It is admitted that because of the decision taken by the Board of Directors of the Respondent/Bank Management Nitham Valar Nithu Scheme has been discontinued by the Respondent/Management when found that the Nitham Valar Nithu deposit outstanding was less than Rs. 5 lakhs and that scheme is not economically viable in those branches and in pursuance of the stoppage of the scheme, the Petitioners who were engaged as Nitham Valar Nithu deposit collection agents

were non-employed by the Respondent/Bank. It is the contention of the Petitioner that it amounts to termination of service and hence the action of the Respondent/Management in terminating the services of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice and also a violation of Section 25F of Industrial Disputes Act. It is further contended that the Division Bench of High Court of Madras has held in a batch of Writ Appeal that *the tiny deposit agent is a workman as defined in Section 2(s) of the Industrial Disputes Act and he is not an independent contractor but part of the organisations*. The Respondent would contend that Andhra Pradesh High Court in a decision reported in Vol. 93 (1998) FJR 144 has held that tiny deposit agents (Nitham Valar Nithu agents) in bank are not workmen and as per the agency agreement, the bank shall also at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice as there is no provision in the agreement to pay compensation and to give notice to the Nitham Valar Nithu agent prior to the termination. There is no violation of Section 25F of Industrial Disputes Act and that Nitham Valar Nithu agents are not workmen and the Petitioner cannot complain about the violation of Section 25F and other provisions of Industrial Disputes Act, 1947 since the action of the bank is valid. The question whether the tiny deposits collector for a bank as Nitham Valar Nithu agent is a workman or not has been decided by the Hon'ble Supreme Court in a case reported as (2001) 3 SCC pg. 36 INDIAN BANK ASSOCIATION VS WORKMEN SYNDICATE BANK. In that case the Hon'ble Supreme Court has held that *these deposit collectors are workmen within the meaning of Section 2(s) of Industrial Disputes Act, 1947 and that as seen from Section 2(rr) of the Industrial Disputes Act, the commission received by the deposit collectors is nothing else but wage which is dependent on the productivity. This commission is paid for promoting the business of the various banks and that there is delay, a relationship of master and servant between the management and the deposit collectors*. So from this recent decision of the Hon'ble Supreme Court, a quietus has been given to the issue whether the tiny deposit collector or Nitham Valar Nithu agent is a workman or not. The learned counsel for the Respondent also has fairly conceded that in view of this decision of the Supreme Court, the Petitioner can be considered as workman under Industrial Disputes Act.

8. In this industrial dispute, the Petitioner has questioned the action of the management of Pandyan Grama Bank in terminating his employment as Nitham Valar Nithu agent as unjustified for the reason that the Respondent/Management has not issued any prior notice of termination, notice pay or compensation which is a violation under section 25F of the Industrial Disputes Act. In the Claim Statement, the Petitioner has further asked for the relief that this Hon'ble Court may be pleased to set aside the order dated 2-3-95 and to direct the Respondent to reinstate the Petitioner into service with back wages, continuity of service and all other attendant benefits. In the above cited case, the Supreme Court has held that *the persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work and that the mode of selection and qualification are not comparable to those of employees even though the employees may be doing similar work*. In the present case, not only on the mode

of selection and qualification not comparable, but even the work is comparable. The work which deposit collectors do is completely different from the work which the regular employees do. There was, thus, no question of absorption and there was also no question of the deposit collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the banks. So, in view of this decision of the Supreme Court, the Petitioner cannot claim to be reinstated in service of the Respondent/Bank. Further, in view of the discontinuation of Nitham Valar Nithi Scheme in the branch where it was found to be economically not viable by the Board of Directors of the Respondent/Bank, the post of Nitham Valar Nithi collection agents will not be available for the Petitioner to reinstate in service as Nitham Valar Nithi collection agent.

9 The Petitioner has requested this Court to pass an order to set aside the order dated 2-3-95 of the Respondent/Management like the order Ex W6 sent to the Manager of Kallupatti branch. A perusal of this letter by Chairman to the Manager of Pandyan Grama Bank regarding stoppage of opening of any fresh Nitham Valar Nithi accounts from 1-4-95 in certain branches of the bank was decision taken by Board of Directors of the Respondent/Bank after reviewing the position of economic viability in continuing the scheme any further, where the amount outstanding under the scheme is less than Rs. 5 lakhs in certain branches. MW1 has also spoken to that effect in his evidence. No contra evidence has been let in by the Petitioner to arrive at a conclusion that the decision taken by the Board of Directors, after the discussion at the State level review committee meeting of the bank in respect of the function of Nitham Valar Nithi Scheme in the bank branches in wrong or incorrect. It is not disputed that the Respondent/Bank is a public sector bank and when the Respondent/Bank found this Nitham Valar Nithi Scheme as not economically viable by considering the cost of effectiveness of the scheme, it can take a decision to discontinue the same in the branches where the amount outstanding under the scheme is less than Rs. 5 lakhs. This action of the Respondent/Bank Management has been taken only in respect of the bank branches where it was found not economically viable to continue the scheme. So under such circumstances, the decision taken by the Respondent/Management and in pursuance of the same a circular has been issued under Ex W6 cannot said to be an incorrect and unjustifiable decision taken by the Respondent/Management. So the question of setting aside the order dated 2-3-95 like Ex W6 does not at all arise.

10 In view of the earlier discussions on the basis of the decision of the Supreme Court above cited, the Petitioner can be considered as a workman under provisions of the Industrial Disputes Act, so far as his engagement as tiny deposit collection agent under Nitham Valar Nithi Scheme for the bank branch. That being the position, the non-employment of the Petitioner without any prior notice and compensation can be considered as a violation of Section 25F of the Industrial Disputes Act, 1947 as it is contended by learned counsel for the Petitioner. In the Counter Statement also, it is the contention of the Respondent/Management that as per the Andhra Pradesh High Court decision at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. Under such circumstances, it can be held that the Petitioner as Nitham Valar Nithi agent has been non-employed because of the stoppage of the scheme in

the bank branch on the decision taken by the Respondent/Management is entitled to get retrenchment compensation, as it is held by the Hon'ble Supreme Court in a case reported as AIR 1980 SC 1219 BETWEEN SANTOSH GUPTA AND STATE BANK OF PATIALA. In that case, the Hon'ble Supreme Court has held that '*compensation shall be payable to workman, in case of closure of undertaking as if, the workman had been retrenched, as it is provided under section 25 (fff) of Industrial disputes Act, 1947*'. It is further observed by the Hon'ble Supreme Court that '*the manifest object of these provisions is to so compensate the workman for loss of employment as to provide him the where with all to subsist until he finds fresh employment*'. This decision of the Hon'ble Supreme Court is quite applicable to the present facts of this case. Under such circumstances, it can be concluded that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner as Nitham Valar Nithi Collection Agent is justified, but the Petitioner is entitled for retrenchment compensation under section 25F of Industrial Disputes Act, 1947. Thus, the point is answered accordingly.

11 In the result, an Award is passed holding that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner Sri A. L. Ramu as Nitham Valar Nithi Collection Agent is justified. The Respondent/Management is directed to pay the Petitioner/Workman as retrenchment compensation, the amount equivalent to the amount he has earned as his commission for the period of one year immediately preceding to his non-employment. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28th March, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined in common for this case and the connected cases :—

For the I Party/Workman WW1 Sri T. Nelson

WW2 Sri A. Guruviah

WW3 Sri A. Soundarajan

WW4 Sri A. Senthilvel

WW5 Sri T. Chellan

WW6 Sri M. Abdul Rajak

WW7 Sri S. Jayamalai Perumal

WW8 Sri Subburaj

WW9 Sri A. L. Ramu

WW10 Sri S. Raman

For the II Party/Management MW1 Sri S. Sangilipandi

Documents marked as Exhibits in common for this case and other connected cases :—

For the I Party/Workman —

Ex. No. Date Description

W1 02-03-84 Xerox copy of the appointment letter issued to Sri A. Guruviah

W2	Nil	Xerox copy of the identity card of Mr R Sankara Narayana Moorthy issued by the Respondent	M17	Nil	Xerox copy of the model of NVN agency agreement
W3	Nil	Xerox copy of the S B passbook of Sri G Subburaj	M18	Nil	Xerox copy of the letter of the Chairman to all Branches to discontinue NVN deposits with list of branches
W4	21-06-85	Original agreement between Sri T. Nelson, workman and Respondent/Management	M19	27-04-93	Xerox copy of the NVN cash receipt
W5	Nil	Xerox copy of the Nitham Valarnidhi Scheme	M20	Nil	Xerox copy of the NVN A/c No 607 and 615 ledger copy
W6	02-03-95	Xerox copy of the letter of the Chairman to the Manager, Pandyan Grama Bank regarding stoppage of Opening of any fresh non-deposit account from 1-4-95 In certain branches	M21	Nil	Xerox copy of the ledger copy of Mr Nelson's S B Account No 40
			M22	22-02-95 to 02-03-95	Xerox copy of the weekly consolidation register
W7	26-06-99	Xerox copy of the circular issued by the Chairman of Bank regarding profits accrued	M23	Nil	Extract of S B account pertaining to Mr T Nelson

नई दिल्ली, 5 अप्रैल, 2002

For the II Party/Management :—

Ex. No.	Date	Description
M1	31-01-95	Xerox copy of the daily collection list
M2	01-02-95	Xerox copy of the sundry creditor cash voucher
M3	01-11-95 to 07-11-95	Xerox copy of the weekly consolidation register
M4	Nil	Xerox copy of the NVN a/c No 356 ledger extract
M5	27-12-91	Xerox copy of the credit transfer voucher NVN A/c
M6	27-12-91	Xerox copy of the debit cash voucher NVN a/c '92
M7	27-12-91	Xerox copy of the NVN discharged receipt voucher
M8	27-12-91	Xerox copy of the requisition letter for closure of NVN account No '92
M9	18-02-91	Xerox copy of the NVN specimen card No '92
M10	18-12-91	Xerox copy of the credit voucher for demand loan
M11	18-12-91	Xerox copy of the debit cash voucher NVN Account
M12	18-12-91	Xerox copy of the NVN discharged receipt
M13	15-12-90	Xerox copy of the NVN Specimen card
M14	03-12-93	Xerox copy of the NVN agent S B A/c No 2149
M15	Nil	Xerox copy of the guidelines for NVN scheme
M16	Nil	Xerox copy of the rules regarding NVN Scheme

का.आ. 1399 — आद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पांडेयन ग्रामा बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/लेबर कोर्ट, चेन्नई के पचाट (मदर्थ मख्या आई डी 471/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-4-2002 को प्राप्त हुआ था।

[स एल 12012/60/97-आई.आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi the 5th April, 2002

S.O. 1399.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref No ID No 471/2001) of the Central Government Industrial Tribunal-cum-Labour Court Chennai as shown in the Annexure in the industrial dispute between the employers in relation to the management of Pandyan Grama Bank and their workman which was received by the Central Government on 04-04-2002

[No L-12012/60/97-IR(B-1)]
AJAY KUMAR Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 28th March, 2002

PRESENT

K. KARTHIKEYAN, Presiding Officer

INDUSTRIAL DISPUTE No 471/2001

(Tamil Nadu State Industrial Tribunal I D No 13/98)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Sri S Hariharan and the Management of Pandyan Grama Bank, Virudhunagar

BETWEEN

Sri S Hariharan I Party/Workman

AND

The Chairman II Party/Management
Pandyan Grama Bank,
Virudhunagar

APPEARANCES

For the Workman M/s P V S Girdhar
Devi Shanker &
R Srinivasan
Advocates

For the Management M/s Row & Reddy
S Vaidyanathan &
W T Parabhakar
Advocates

The Govt of India, Ministry of Labour in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No L-12012/60/97/IR (B-I) dated 02-01-98

2 This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, Chennai where it was taken on file as I D No 13/98. When the matter was pending enquiry in that Tribunal, the Government of India Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tamil Nadu State Industrial Tribunal the case has been taken on file as I D No 471/2001 and notices were sent to the counsel on record on either side informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 01-03-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case by filing their Claim Statement and Counter Statement respectively.

3 When the matter came up before me for final hearing on 14-02-2002, upon perusing the Claim Statement Counter Statement, the other material papers on record, the oral and documentary evidence let in on either side and after hearing the arguments advanced by the learned counsel on either side, this matter having stood over till this date for consideration, this Tribunal has passed the following —

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt for adjudication by this Tribunal is as follows —

“Whether the action of the Management of Pandyan Grama Bank in terminating the employment of Sri S

Hariharan is justified. If not, what relief the concerned workman is entitled to.”

4 The averments in the Claim Statement of the I Party/ Workman Sri S Hariharan (hereinafter refers to as Petitioner) are briefly as follows —

The Petitioner was appointed as commission agent in the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) as part of a scheme called Nitham Valar Nithi Scheme by an order of appointment dated 01-02-1985. He was appointed as collection agent on prior approval of the Head Office by signing an agreement with the Respondent/Bank. He had furnished a security deposit of Rs 1000/- He was paid commission on the collection made by him at the rate of 3%. He should remit the entire collection made on the previous day into the bank before the banking hours on the next day. If he fails to do so, he will lose 50% of the commission on the amount collected and in case of default exceeding one day, he will lose the entire commission. The workman is taken to task, when any depositor closes the account within a period of six months to twenty four months from the date of opening of the said account. There will be a reduction of the commission payable to the agent in that event. For all acts of commission and omission of the nominee, the collection agent will be responsible and answerable to the bank. The Respondent has issued a letter to the Manager dated 2-3-95 not allowing to open new accounts if the deposit on the head of ‘NVN’ account is less than five lakhs. Thus the number of accounts dwindled with consequent decrease in the earning of the deposit collectors. As such, the Respondents have failed to give work to the Petitioner. Hence this action of the Respondent in terminating the service of the Petitioner indirectly without giving reasons is arbitrary and unreasonable. The Petitioner filed a petition before the Assistant Labour Commissioner on conciliation seeking to reinstate the Petitioner with back wages and continuity of service. On failure of conciliation efforts taken by the Assistant Labour Commissioner, he submitted a failure of conciliation report to the Government, which in turn referred this matter as an industrial dispute for adjudication by this Tribunal. The impugned order is arbitrary and unreasonable and violative of the Petitioner’s rights under Article 14, 16 and 21 of the Constitution. The Division Bench of High Court Madras, in a batch of appeals has held that there is sufficient control over the work of Tiny Deposit Agents by the bank, that the Tiny Deposit Agent is a workman as defined in section 2(2) of the Industrial Disputes Act and that such a Tiny Deposit Agent is not an independent contractor but part of the organisation. Though in the letter of appointment issued by the bank to the Petitioner, commission was fixed payable to the Petitioner at 3% on the total collection made by the Petitioner each month, clause 16 of the agreement provided that the commission could be determined by the bank time to time. As per rule of the scheme, opening of the account should be done only after the supervisory official authorises the same, though the collecting agent is permitted to receive deposits from door to door. This is an important circumstance which shows that the collecting agent is not an independent contractor so as to enrol customers of the bank on his own. The Tiny Deposit Agent is undoubtedly engaged in the business of the bank i.e. the deposit mobilisation. The remuneration of the Tiny Deposit Agent is fixed in the agreement. Though it is called commission, it will still be

remuneration as defined by the decisions of the Supreme Court as well as the definition of the wages in the Industrial Disputes Act. The nature of work of the Petitioner demands daily attendance in bank and deposit of the collections made by him on the previous day. The Petitioner has to do some clerical work as he is bound to fill up relevant forms, ledgers, pass books, etc. The Petitioner should furnish a security deposit of Rs. 1000/- which will be placed in fixed deposit for a minimum period of three years. The bank can instruct the agent not to enrol new subscribers at any time. The provision enabling the agent to terminate the agency on giving the bank a month's notice is the circumstances, which goes to show that it is a contract of service. The impugned order of the Respondent does not allow the workmen to open a fresh account under 'NVN' scheme and thereby terminated the services of the Petitioner. The action of the Respondent in terminating the service of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice. The action of the Respondent in terminating the service of the Petitioner is violative of Chapter VA and Chapter VB particularly section 25F of the Industrial Disputes Act. No notice has been served prior to the issuance of the said order, nor was retrenchment compensation paid. The Govt. Ministry of Finance issued a directive not to wind up the said scheme. Many of the nationalised banks which were virtually winding up the said scheme restored it. Therefore, it is prayed that this Hon'ble Court may be pleased to set aside the impugned order dated 2-3-95 and direct the Respondent to reinstate the Petitioner in service with back wages, continuity of service and all other attendant benefits.

5. The averments in the Counter Statement filed by the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) are briefly as follows :—

The Petitioner was engaged as Nitham Valar Nithi Scheme agent from 01-02-1985. Unlike the regular employees of the bank, he was not paid salary. He was paid only commission depending upon the amount of deposit collected. Unlike the regular bank employees he was not required to attend the bank daily or sign the attendance register. He was not required to attend to any other work in the bank. His work consisted in collecting tiny deposits and deposit them into the bank the next day. He may not be doing collection work not more than twice a week. He is governed by the Agency agreement. Unlike other employees, he was not subject to the disciplinary control of the bank and there are no fixed hours of work. The Nitham Valar Nithi Scheme was in operation in the Respondent/Bank since 1979. During State Level Review Committee meeting convened by NABARD on 10-01-95 at Madras, this matter was discussed and the Respondent was advised to review the cost factor in continuing Nitham Valar Nithi Scheme. Subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme in the bank as discussed at the State Level Review Committee meeting. On that basis, the Board of Directors of the bank made a review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs. 5,00,000/-. Accordingly, the bank during the Board of Directors' meeting held in February, 1995 decided to discontinue the scheme at the branches, where Nitham Valar Nithi Scheme

deposit outstanding was less than Rs. 5 lakhs. When this was implemented, the outstanding under Nitham Valar Nithi Scheme in Seithunganallur branch was less than Rs. 5 lakhs. Moreover, the agency agreement entered into between the bank and the Petitioner clearly states that the bank shall also be at liberty to terminate the agency any time without assigning any reason whatsoever. The Respondent/Bank is a public sector bank which continues to incur heavy loss. When the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the scheme, the bank had no alternative but to discontinue the scheme at certain branches. When the scheme is withdrawn naturally the agent engaged purely on temporary and commission basis ceased to be engaged further. This has been done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. This by no stretch of imagination can be considered unreasonable arbitrary and violative of rights of the Petitioner. NVN rules provides that the depositor may open the account through the collection agent authorised by the bank in this behalf. Thus, it is clear that the Nitham Valar Nithi agent is free to open an Nitham Valar Nithi account on his own. The Nitham Valar Nithi agents were not the employees of the bank as their relationship with the bank was only that of contract for service and not contract of service. Nitham Valar Nithi agents need not comply with the minimum conditions stipulated for recruitment as employees of the bank such as age, qualification etc.. They were engaged purely on commission basis. Even though, he attended collection work in a day, but no collection is effected he would not be paid commission for that day. So, the commission cannot be treated as wages. Quite recently, the Andhra Pradesh High Court has held in a case that tiny deposit collectors/Nitham Valar Nithi agents in bank are not workmen. The Nitham Valar Nithi agents come to the branch only when they have to remit the amount they collected towards Nitham Valar Nithi Scheme. He has to fill up only specific forms such as list of accounts in which he had made collection and enter the amount collected in the pass book. Though Nitham Valar Nithi agents were authorised to enter in the passbook, it is not authoritative and it is subject to verification by the bank with the Nitham Valar Nithi ledger. Nitham Valar Nithi agents was not required to attend any other work in the bank. Nitham Valar Nithi agents are not workmen, even assuming so they cannot complain about violation of Section 25F and other provisions of the Industrial Disputes Act, 1947 as the action of the bank is valid as per section 2(a) 2(bb) of the Industrial Disputes Act, 1947. The Petitioner has signed the agreement wherein stipulation No. 5 of the agency agreement states that the bank shall also be at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice. There is no provision in agency agreement saying that notice should be issued to Nitham Valar Nithi agents prior to their termination and also there is no provision in the agreement to pay compensation. Hence, there is no violation of Section 25F of the Industrial Disputes Act, 1947. In any event, he cannot claim reinstatement because there was no post of Nitham Valar Nithi agent. It was only an agency between the Petitioner and the bank and the scheme came to be abolished as far as Seithunganallur branch is concerned. That is why, the Andhra Pradesh High Court has held at the worst all Nitham Valar Nithi agents can be awarded compensation and not

reinstatement. For all the reasons mentioned it is prayed that this Hon'ble Tribunal may be pleased to pass an award rejecting the claim of the Petitioner with cost.

6. When the matter was taken up finally for enquiry, the learned counsel appearing on either side represented that a joint trial can be held for this case along with the other similar cases, 13 in number. The evidence let in on either side both oral and documentary can be treated as a common evidence in all these 14 cases. As per their request, a joint trial has been conducted and evidence recorded in these cases along with other cases have been treated as common evidence on either side. Out of the fourteen petitioners of these fourteen cases, ten have been examined as WW1 to WW10 and on the side of the management one common witness has been examined as MW1. For the Petitioner/Workmen seven documents have been marked as Ex. W1 to W7 and for the management twenty three documents have been marked as Ex. M1 to M23 as common documentary evidence in all these cases. The arguments advanced by the learned counsel on either side was heard.

7. The Point for my consideration is—

“Whether the action of the Management of Pandyan Grama Bank in terminating the employment of Sri S. Hariharan is justified? If not, what relief the concerned workmen is entitled to?”

Point :—

The Petitioner Sri S. Hariharan has been employed by the management of Pandyan Grama Bank as an agent for collecting amounts from the depositors towards Nitham Valar Nithi, a deposit Scheme introduced by the Respondent/Bank. For that the Petitioner had entered into an agreement with the Respondent/Bank. The Petitioner, as an agent for collecting amount as tiny deposits from the depositors under the said scheme, has to deposit the collected amount into the bank next day. The Petitioner was engaged as such by the Respondent/Bank on commission basis. It is the admission of the Petitioner that he was paid commission on the collection made by him at the rate of 3%. The xerox copy of the S.B. passbook of the Petitioner wherein the payment of his commission has been credited, the Petitioner was engaged for the Seithunganallur branch of the Respondent/Bank as a collection agent for 'tiny deposits under Nitham Valar Nithi Scheme. The Respondent/Management had sent a letter dated 2-3-95 to the Managers of certain branches of the Respondent/Bank informing that as per the advice given by NABARD in the meeting held on 10-1-95 at Madras, the Board of Management of Respondent/Bank has also resolved to discontinue the Nitham Valar Nithi Scheme in the branches, where the outstanding is less than Rs. 5,00,000/- as on 31-1-95 and advice the branch not to open any fresh Nitham Valar Nithi account from 1-4-95 and to continue the existing Nitham Valar Nithi accounts in the maturity/closure of period/ accounts. The xerox copy of that letter sent to the Manager of Koomapatti branch of Pandyan Grama Bank is Ex. W6 as it is sent to Seithunganallur branch. In pursuance of the same, the Manager of the said branch of the Respondent/Bank, informed the Petitioner, a collecting agent under Nitham Valar Nithi Scheme not to open new accounts and thereby the Petitioner was not given work

by the Respondent/Bank. This non-employment of the Petitioner has been mentioned by the Petitioner in his Claim Statement as termination of his service indirectly without giving reasons and it is arbitrary and unreasonable. It is the contention of the Respondent/Management in their Counter Statement that during state level review committee meeting convened by NABARD on 10-1-95 at Madras, the matter was discussed and the management of the Respondent/Bank was advised to review the cost factor in continuing Nitham Valar Nithi Scheme and subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme with the bank as discussed at the State level Review Committee meeting and Board of Directors of the bank made review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs. 5 lakhs and accordingly, the Board of Directors decided to discontinue the scheme in the branches, where the Nitham Valar Nithi deposits outstanding is less than Rs. 5 lakhs. It is further contended in the Counter statement that the Respondent/Bank is a public sector bank, which continues to incur heavy loss and that when the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches and that when the scheme is withdrawn, naturally the agents engaged purely on temporary and commission basis ceased to be engaged further and that was done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. Hence, it cannot be considered as unreasonable, arbitrary, and in violation of the rights of the Petitioner. It is admitted that because of the decision taken by the Board of Directors of the Respondent/Bank Management Nitham Valar Nithi Scheme has been discontinued by the Respondent/Management when found that the Nitham Valar Nithi deposit outstanding was less than Rs. 5 lakh and that scheme is not economically viable in those branches and in pursuance of the stoppage of the scheme, the Petitioners who were engaged as Nitham Valar Nithi deposit collection agents were non-employed by the Respondent/Bank. It is the contention of the Petitioner that it amounts to termination of service and hence the action of the respondent/Management in terminating the services of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice and also a violation of Section 25F of Industrial Disputes Act. It is further contended that the Division of High Court of Madras has held in a batch of Writ Appeal that *'the tiny deposit agent is a workman as defined in Section 2(s) of the Industrial Disputes Act and he is not an independent contractor but part of the organisations.'* The Respondent would contend that Andhra Pradesh High Court in a decision reported in Vol. 93 (1998) FJR 144 has held that tiny deposit agents (Nitham Valar Nithi agents) in bank are not workmen and as per the agency agreement, the bank shall also at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice as there is no provision in the agreement to pay compensation and to give notice to the Nitham Valar Nithi agent prior to the termination. There is no violation of section 25F of Industrial Disputes Act and that Nitham Valar Nithi agents are not workmen and the Petitioner cannot

complaint about the violation of Section 25F and other provisions of Industrial Disputes Act, 1947, since the action of the bank is valid. The question whether the tiny deposits collector for a bank as Nitham Valar Nithi agent is a workman or not has been decided by the Hon'ble Supreme Court in a case reported as (2001) 3 SCC pg 36 INDIAN BANK ASSOCIATION VS WORKMEN SYNDICATE BANK. In that case the Hon'ble Supreme Court has held that *'these deposit collectors are workmen within the meaning of section 2(s) of Industrial Disputes Act, 1947 and that as seen from Section 2(rr) of the Industrial Disputes Act, the commission received by the deposit collectors is nothing else but wage which is dependent on the productivity. This commission is paid for promoting the business of the various banks and that there is delay a relationship of master and servant between the management and the deposit collectors'*. So from this recent decision of the Hon'ble Supreme Court a quietus has been given to the issue whether the tiny deposit collector or Nitham Valar Nithi agent is a workman or not. The learned counsel for the Respondent also has fairly conceded that in view of this decision of the Supreme Court, the Petitioner can be considered as a workman under Industrial Disputes Act.

8 In this industrial dispute the Petitioner has questioned the action of the management of Pandyan Grama Bank in terminating his employment as Nitham Valar Nithi agent as unjustified for the reason that the Respondent/Management has not issued any prior notice of termination, notice pay or compensation which is a violation under Section 25F of the Industrial Disputes Act. In the Claim Statement the Petitioner has further asked for the relief that this Hon'ble Court may be pleased to set aside the order dated 2-3-95 and to direct the Respondent to reinstate the Petitioner into service with back wages, continuity of service and all other attendant benefits. In the above cited case, the Supreme Court has held that *'the persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work and that the mode of selection and qualification are not comparable to those of employees even though the employees may be doing similar work'*. In the present case, not only on the mode of selection and qualification is not comparable, but even the work is comparable. The work which deposit collectors do is completely different from the work which the regular employees do. There was, thus, no question of absorption and there was also no question of the deposit collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the banks. So, in view of this decision of the Supreme Court the Petitioner cannot claim to be reinstated in service of the Respondent/Bank. Further, in view of the discontinuation of Nitham Valar Nithi Scheme in the branch where it was found to be economically not viable by the Board of Directors of the Respondent/Bank, the post of Nitham Valar Nithi collection agents will not be available for the Petitioner to reinstate in service as Nitham Valar Nithi collection agent.

9 The Petitioner has requested this Court to pass an order to set aside the order dated 2-3-95 of the Respondent/Management like the order Ex W6 sent to the Manager of Seithunganalur branch. A perusal of this letter by Chairman to the Manager of Pandyan Grama Bank regarding stoppage of opening of any fresh Nitham Valar Nithi accounts from 1-4-95 in certain branches of the bank

was decision taken by Board of Directors of the Respondent/Bank after reviewing the position of economic viability in continuing the scheme any further, where the amount outstanding under the scheme is less than Rs 5 lakhs in certain branches. MW1 has also spoken to that effect in his evidence. No contra evidence has been let in by the Petitioner to arrive at conclusion that the decision taken by the Board of Directors, after the discussion at the State level review committee meeting of the bank in respect of the function of Nitham Valar Nithi Scheme in the bank branches is wrong or incorrect. It is not disputed that the Respondent/Bank is a public sector bank and when the Respondent/Bank found this Nitham Valar Nithi Scheme as not economically viable by considering the cost of affectiveness of the scheme, it can take a decision to discontinue the same in the branches where the amount outstanding under the scheme is less than Rs 5 lakhs. This action of the Respondent/Bank Management has been taken only in respect of the bank branches where it was found not economically viable to continue the scheme. So under such circumstances, the decision taken by the Respondent/Management and in pursuance of the same a circular has been issued under Ex W6 cannot said to be an incorrect and unjustifiable decision taken by the Respondent/Management. So, the question of setting aside the order dated 2-3-95 like Ex W6 does not at all arise.

10 In view of the earlier discussions on the basis of the decision of the Supreme Court above cited, the Petitioner can be considered as a workman under provisions of the Industrial Disputes Act, so far as his engagement as tiny deposit collection agent under Nitham Valar Nithi Scheme for the bank branch. That being the position, the non-employment of the Petitioner without any prior notice and compensation can be considered as a violation of Section 25F of the Industrial Disputes Act, 1947 as it is contended by learned counsel for the Petitioner. In the Counter Statement also, it is the contention of the Respondent/Management that as per the Andhra Pradesh High Court decision at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. Under such circumstances, it can be held that the Petitioner as Nitham Valar Nithi agent has been non-employed because of the stoppage of the scheme in the bank branch on the decision taken by the Respondent/Management is entitled to get retrenchment compensation as it is held by the Hon'ble Supreme Court in a case reported as AIR 1980 SC 1219 BETWEEN SANTOSH GUPTA AND STATE BANK OF PATIALA. In that case, the Hon'ble Supreme Court has held that *'compensation shall be payable to workman, in case of closure of undertaking as if, the workman had been retrenched as it is provided under Section 25 (fff) of Industrial Disputes Act, 1947'*. It is further observed by the Hon'ble Supreme Court that *'the manifest object of these provisions is to so compensate the workman for loss of employment as to provide him the wherewithal to subsist until he finds fresh employment'*. This decision of the Hon'ble Supreme Court is quite applicable to the present facts of this case. Under such circumstances it can be concluded that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner as Nitham Valar Nithi Collection Agent is justified, but the Petitioner is entitled for retrenchment compensation under Section 25F of Industrial Disputes Act 1947. Thus the point is answered accordingly.

11 In the result, an Award is passed holding that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner Sri S Hariharan as Nitham Valar Nithi Collection Agent is justified. The Respondent/Management is directed to pay the Petitioner/Workman as retrenchment compensation, the amount equivalent to the amount he has earned as his commission for the period of one year immediately preceding to his non-employment. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28th March, 2002)

K KARTHIKEYAN, Presiding Officer

Witnesses Examined in common for this case and the connected cases :—

For the I Party/Workman WW1 Sri T Nelson
WW2 Sri A Guruviah
WW3 Sri A Soundarajan
WW4 Sri A Senthivel
WW5 Sri T Chellan
WW6 Sri M Abdul Rajak
WW7 Sri S Jayamalai Perumal
WW8 Sri Subburaj
WW9 Sri A L Ramu
WW10 Sri S Raman

For the II Party/Management MW1 Sri S Sangilipandi

Documents marked as Exhibits in common for this case and other connected cases :—

For the I Party/Workman :—

Ex. No.	Date	Description
W1	02-03-84	Xerox copy of the appointment letter issued to Sri A Guruviah
W2	Nil	Xerox copy of the identity card of Mr R Sankara Narayana Moorthy issued by the Respondent
W3	Nil	Xerox copy of the S B passbook of Sri G Subburaj
W4	21-06-85	Original agreement between Sri T. Nelson, workman and Respondent/Management
W5	Nil	Xerox copy of the Nitham Valarnidhi Scheme
W6	02-03-95	Xerox copy of the letter of the Chairman to the Manager, Pandyan Grama Bank regarding stoppage of Opening of any fresh non-deposit account from 1-4-95 In certain branches
W7	26-06-99	Xerox copy of the circular issued by the Chairman of Bank regarding profits accrued

For the II Party/Management :—

Ex. No.	Date	Description
M1	31-01-95	Xerox copy of the daily collection list
M2	01-02-95	Xerox copy of the sundry creditor cash voucher
M3	01-11-95 to 07-11-95	Xerox copy of the weekly consolidation register
M4	Nil	Xerox copy of the NVM a/c No 356 ledger extract
M5	27-12-91	Xerox copy of the credit transfer voucher NVN A/c
M6	27-12-91	Xerox copy of the debit cash voucher NVN a/c 92
M7	27-12-91	Xerox copy of the NVN discharged receipt voucher
M8	27-12-91	Xerox copy of the requisition letter for closure of NVN account No 92
M9	18-02-91	Xerox copy of the NVN specimen card No 92
M10	18-12-91	Xerox copy of the credit voucher for demand loan
M11	18-12-91	Xerox copy of the debit cash voucher NVN Account
M12	18-12-91	Xerox copy of the NVN discharged receipt
M13	15-12-90	Xerox copy of the NVN Specimen card
M14	03-12-93	Xerox copy of the NVN agent S B A/c No 2149
M15	Nil	Xerox copy of the guidelines for NVN scheme
M16	Nil	Xerox copy of the rules regarding NVN Scheme
M17	Nil	Xerox copy of the model of NVN agency agreement
M18	Nil	Xerox copy of the letter of the Chairman to all Branches to discontinue NVN deposits with list of branches
M19	27-04-93	Xerox copy of the NVN cash receipt
M20	Nil	Xerox copy of the NVN a/c No 607 and 615 ledger copy Xerox copy of the ledger copy of Mr Nelson's S B Account No 40
M22	22-02-95 to 02-03-95	Xerox copy of the weekly consolidation register
M23	Nil	Extract of S B account pertaining to Mr T Nelson

नई दिल्ली, 5 अप्रैल, 2002

का.आ. 1400.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पंडियन ग्रामा बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/लेबर कोर्ट, चेन्नई के पंचाट (संदर्भ संख्या आई.डी. नं. 463/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार का 4-4-2002 को प्राप्त हुआ था।

[सं. एल-12012/61/97-आई आर.(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 5th April, 2002

S.O. 1400.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. I.D. No. 463/2001) of the Central Government Industrial Tribunal cum Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Pandyan Grama Bank and their workman, which was received by the Central Government on 04-04-2002.

[No. L-12012/61/97-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 28th March, 2002

Present : K. KARTHIKEYAN,

Presiding Officer

INDUSTRIAL DISPUTE NO. 463/2001

(Tamil Nadu State Industrial Tribunal I.D.No. 3/98)

(In the matter of the dispute for adjudication under clause (d) sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) between the Workman Sri V. Muruganantham and the Management of Pandyan Grama Bank, Virudhunagar.

BETWEEN

Sri V. Muruganantham : I Party/Workman

AND

The Chairman,
Pandyan Grama Bank,
Virudhunagar. : II Party/Management

Appearance :

For the Workman : M/s. P.V.S. Giridhar
Devi Shanker &
R.Srinivasan,
Advocates

For the Management : M/s. Row & Reddy,
S.Vaidhyanathan &
W.T. Prabakar,
Advocates

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No. L-12012/61/97/IR (B-I) dated 29-12-97.

2. This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, Chennai where it was taken on file as I.D. No. 3/98. When the matter was pending enquiry in that Tribunal, the Government of India, Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tamil Nadu State Industrial Tribunal, the case has been taken on file as I.D. No. 463/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 01-03-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case by filing their Claim Statement and Counter Statement respectively.

3. When the matter came up before me for final hearing on 14-02-2002, upon perusing the Claim Statement, Counter Statement, the other material papers on record, the oral and documentary evidence let in on either side, and after hearing the arguments advanced by the learned counsel on either side, this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows :—

“Whether the action of the Management of Pandyan Grama Bank in terminating the services of Sri V. Muruganantham is legal and justified ? If not, to what relief the workman is entitled ?”

4. The averments in the Claim Statement of the I Party/Workman Sri V. Muruganantham (hereinafter refers to as Petitioner) are briefly as follows :—

The Petitioner was appointed as a commission agent in the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) as part of a scheme called Nitham Valar Nithi Scheme, by an order of appointment dated 01-02-1984. He was appointed as collection agent on prior approval of the Office by signing an agreement with the Respondent/Bank, he had furnished a security deposit of Rs. 1000/-. He was paid commission on the collection made by him at the rate of 3%. He should remit the entire collection made on the previous day into the bank before the banking hours on the next day. If he fails to do so, he will lose 50% of the commission on the amount collected and in case of default exceeding one day, he will lose the entire commission. The workman is taken to task, when any depositor closes the account within a period of six months to twenty four months from the date of opening of the said account. There will be a reduction of the commission payable to the agent in that event. For all acts of commission and omission of the nominee, the collection agent will be responsible and answerable to

the bank. The Respondent has issued a letter to the Manager dated 2-3-95 not allowing to open new accounts, if the deposit on the head of 'NVN' account is less than five lakhs. Thus, the number of accounts dwindled with consequent decrease in the earning of the deposit collectors. As such, the Respondents have failed to give work to the Petitioner. Hence, this action of the Respondent in terminating the service of the Petitioner indirectly without giving reasons is arbitrary and unreasonable. The Petitioner filed a petition before the Assistant Labour Commissioner on conciliation seeking to reinstate the Petitioner with back wages and continuity of service. On failure of conciliation efforts taken by the Assistant Labour Commissioner, he submitted a failure of conciliation report to the Government, which in turn referred this matter as an Industrial Dispute for adjudication by this Tribunal. The impugned order is arbitrary and unreasonable and violative of the Petitioner's rights under Article 14, 16 and 21 of the Constitution. The Division Bench of High Court Madras, in a batch of appeals has held that there is sufficient control over the work of Tiny Deposit Agents by the bank, that the Tiny Deposit Agent is a workman as defined in Section 2(2) of the Industrial Disputes Act and that such a Tiny Deposit Agent is not an independent contractor but part of the organisation. Though in the letter of appointment issued by the bank to the Petitioner, commission was fixed payable to the Petitioner at 3% on the total collection made by the Petitioner each month, clause 16 of the agreement provided that the commission could be determined by the bank time to time. As per rule of the scheme, opening of the account should be done only after the supervisory official authorises the same, though the collecting agent is permitted to receive deposits from door to door. This is an important circumstance which shows that the collecting agent is not an independent contractor so as to enrol customers of the bank on his own. The Tiny Deposit Agent is undoubtedly engaged in the business of the bank i.e. the deposit mobilisation. The remuneration of the Tiny Deposit Agent is fixed in the agreement. Though it is called commission, it will still be remuneration as defined by the decisions of the Supreme Court as well as the definition of the wages in the Industrial Disputes Act. The nature of work of the Petitioner demands daily attendance in bank and deposit of the collections made by him on the previous day. The Petitioner has to do some clerical work as he is bound to fill up relevant forms, ledgers, pass books, etc. The Petitioner should furnish a security deposit of Rs. 1000/- which will be placed in fixed deposit for a minimum period of three years. The bank can instruct the agent not to enrol new subscribers at any time. The provision enabling the agent to terminate the agency on giving the bank a month's notice is the circumstances, which goes to show that it is a contract of service. The impugned order of the Respondent does not allow the workmen to open a fresh account under 'NVN' scheme and thereby terminated the services of the Petitioner. The action of the Respondent in terminating the service of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice. The action of the Respondent in terminating the service of the Petitioner is violative of Chapter V-A and Chapter V-B, particularly Section 25F of the Industrial Disputes Act. No notice has been served prior to the issuance of the said order, nor was retrenchment compensation paid. The Govt. Ministry of Finance issued a directive not to

wind up the said scheme. Many of the nationalised banks which were virtually winding up the said scheme restored it. Therefore, it is prayed that this Hon'ble Court may be pleased to set aside the impugned order dated 2-3-95 and direct the Respondent to reinstate the Petitioner in service with back wages, continuity of service and all other attendant benefits.

5. The averments in the Counter Statement filed by the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) are briefly as follows :—

The Petitioner was engaged as Nitham Valar Nithi Scheme agent from 01-02-1984. Unlike the regular employees of the bank, he was not paid salary. He was paid only commission depending upon the amount of deposit collected. Unlike the regular bank employees he was not required to attend the bank daily or sign the attendance register. He was not required to attend to any other work in the bank. His work consisted in collecting tiny deposits and deposit them into the bank the next day. He may not be doing collection work not more than twice a week. He is governed by the Agency agreement. Unlike other employees, he was not subject to the disciplinary control of the bank and there are no fixed hours of work. The Nitham Valar Nithi Scheme was in operation in the Respondent/Bank since 1979. During State Level Review Committee meeting convened by NABARD on 10-01-95 at Madras, this matter was discussed and the Respondent was advised to review the cost factor in continuing Nitham Valar Nithi Scheme. Subsequently, NABARD suggested to the Respondent/bank to consider the discontinuity of function of Nitham Valar Nithi Scheme in the bank as discussed at the State Level Review Committee meeting. On that basis, the Board of Directors of the bank made a review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs. 5,00,000/-. Accordingly, the bank during the Board of Directors' meeting held in February, 1995 decided to discontinue the scheme at the branches, where Nitham Valar Nithi Scheme deposit outstanding was less than Rs. 5 lakhs. When this was implemented, the outstanding under Nitham Valar Nithi Scheme in Kallal branch was less than Rs. 5 lakhs. Moreover, the agency agreement entered into between the bank and the Petitioner clearly states that the bank shall also be at liberty to terminate the agency any time without assigning any reason whatsoever. The Respondent/Bank is a public sector bank which continues to incur heavy loss. When the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches. When the scheme is withdrawn naturally the agent engaged purely on temporary and commission basis ceased to be engaged further. This has been done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. This by no stretch of imagination can be considered unreasonable arbitrary and violative of rights of the Petitioner. NVN rules provides that the depositor may open the account through the collection agent authorised by the bank in this behalf. Thus, it is clear that the Nitham Valar Nithi agent is free to open an Nitham Valar Nithi account on his own. The Nitham Valar Nithi agents were not the employees of the bank as their relationship with the bank was only that of contract for

service and not contract of service Nitham Valar Nithi agents need not comply with the minimum conditions stipulated for recruitment as employees of the bank such as age, qualification etc They were engaged purely on commission basis Even though, he attended collection work in a day, but no collection is effected he would not be paid commission for that day So, the commission cannot be treated as wages Quite recently, the Andhra Pradesh High Court has held in a case that tiny deposit collectors/Nitham Valar Nithi agents in bank are not workmen The Nitham Valar Nithi agents come to the branch only when they have to remit the amount they collected towards Nitham Valar Nithi Scheme He has to fill up only specific forms such as list of accounts in which he had made collection and enter the amount collected in the pass book Though Nitham Valar Nithi agents were authorised to enter in the passbook, it is not authoritative and it is subject to verification by the bank with the Nitham Valar Nithi ledger Nitham Valar Nithi agent was not required to attend any other work in the bank Nitham Valar Nithi agents are not workmen, even assuming so they cannot complain about violation of Section 25F and other provisions of the Industrial Disputes Act, 1947 as the action of the bank is valid as per section 2(oo) 2(bb) of the Industrial Disputes Act, 1947 The Petitioner has signed the agreement wherein stipulation No 5 of the agency agreement states that the bank shall also be at liberty to terminate the agency at any time without assigning any reason whatsoever Hence, there is no violation of natural justice There is no provision in agency agreement saying that notice should be issued to Nitham Valar Nithi agents prior to their termination and also there is no provision in the agreement to pay compensation Hence there is no violation of section 25F of the Industrial Disputes Act, 1947 In any event, he cannot claim reinstatement because there was no post of Nitham Valar Nithi agent It was only an agency between the Petitioner and the bank and the scheme came to be abolished as far as Kallal branch is concerned That is why, the Andhra Pradesh High Court has held at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement For all the reasons mentioned it is proved that this Hon'ble Tribunal may be pleased to pass an award rejecting the claim of the Petitioner with cost

6 When the matter was taken up finally for enquiry the learned counsel appearing on either side represented that a joint trial can be held for this case along with the other similar cases, 13 in number The evidence let in on either side both oral and documentary can be treated as a common evidence in all these 14 cases As per their request a joint trial has been conducted and evidence recorded in these cases along with other cases have been treated as common evidence on either side Out of the fourteen petitioners of these fourteen cases, ten have been examined as WW1 to WW10 and on the side of the management one common witness has been examined as MW1 For the Petitioner/Workmen seven documents have been marked as E\ W1 to W7 and for the management twenty three documents have been marked as E\ M1 to M23 as common documentary evidence in all these cases The arguments advanced by the learned counsel on either side was heard

7 The point for my consideration is—

Whether the action of the management of Pandyan Grama Bank in terminating the services of Sri V

Muruganantham is legal and justified, if not, to what relief the workman is entitled?

Point

The Petitioner Sri V Muruganantham has been employed by the management Pandyan Grama Bank as an agent for collecting amounts from the depositors towards Nitham Valar Nithi, a deposit Scheme introduced by the Respondent/Bank For the petitioner had entered into an agreement with the respondent/Bank The Petitioner, as an agent for collecting amount as tiny deposits from the depositors under the said scheme, has to deposit the collected amount into bank next day The Petitioner was engaged as such by the Respondent/Bank on commission basis It is the admission of the Petitioner that he was paid commission on the collection made by him at the rate of 3% The xerox copy of the S B passbook of the Petitioner wherein the payment of his commission has been credited The Petitioner was engaged for the Kallal branch of the Respondent/Bank as a collection agent for tiny deposits under Nitham Valar Nithi Scheme The Respondent/Management had sent a letter dated 2 3 95 to the Managers' of certain branches of the Respondent/Bank informing that as per the advice given by NABARD in the meeting held on 10 1 95 at Madras, the Board of management of Respondent/Bank has also resolved to discontinue the Nitham Valar Nithi Scheme in the branches, where the outstanding is less than 5,00,000/- as on 31-1-95 and advise the branch not to open any fresh Nitham Valar Nithi account from 1 4 95 and to continue the existing Nitham Valar Nithi accounts in the maturity/closure of period/accounts The xerox copy of that letter sent to the Manager of Koompatti branch of Pandyan Grama Bank is E\ W6 as it is sent to Kallal branch In pursuance of the same the manager of the said branch of the Respondent/Bank, informed the Petitioner's a collecting agent under Nitham Valar Nithi Scheme not to open new accounts and thereby the petitioner was not given work by the Respondent/Bank this non-employment of the Petitioner has been mentioned by the Petitioner in his Claim Statement as termination of his service indirectly without giving reasons and it is arbitrary and unreasonable It is the contention of the Respondent/Management in their Counter Statement that during state level review committee meeting convened by NABARD on 10 1 95 at Madras, the matter was discussed and the management of the Respondent/Bank was advised to review the cost factor in continuing Nitham Valar Nithi Scheme and subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme with the bank as discussed at the State level Review Committee meeting and Board of Directors of the bank made review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs 5 lakhs and accordingly, the Board of Directors decided to discontinue the scheme in the branches where the Nitham Valar Nithi deposits outstanding is less than Rs 5 lakhs It is further contended in the Counter Statement that the Respondent/Bank is a public sector bank which continues to incur heavy loss and that when the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same the bank had no alternative but to discontinue the scheme at certain branches and that when the scheme

is withdrawn, naturally the agents engaged purely on temporary and commission basis ceased to be engaged further and that was done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. Hence, it cannot be considered as unreasonable, arbitrary, and in violation of the rights of the Petitioner. It is admitted that because of the decision taken by the Board of Directors of the Respondent/Bank Management Nitham Valar Nithi Scheme has been discontinued by the Respondent/Management when found that the Nitham Valar Nithi deposit outstanding was less than Rs 5 lakhs and that scheme is not economically viable in those branches and in pursuance of the stoppage of the scheme the Petitioners who were engaged as Nitham Valar Nithi deposit collection agents were non-employed by the Respondent/Bank. It is the contention of the Petitioner that it amounts to termination of service and hence the action of the Respondent/Management in terminating the services of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice and also a violation of Section 25F of Industrial Disputes Act. It is further contended that the Division Bench of High Court of Madras has held in a batch of Writ Appeal that 'the' tiny deposit agent is a workman as defined in Section 2(s) of the Industrial Disputes Act and he is not an independent contractor but part of the organisation. The Respondent would contend that Andhra Pradesh High Court in a decision reported in Vol 93 (1998) FJR 144 has held that tiny deposit agents (Nitham Valar Nithi agents) in bank are not workmen and as per the agency agreement the bank shall also at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence there is no violation of natural justice as there is no provision in the agreement to pay compensation and to give notice to the Nitham Valar Nithi agent prior to the termination. There is no violation of section 25F of Industrial Disputes Act and that Nitham Valar Nithi agents are not workmen and the Petitioner cannot complain about the violation of Section 25F and other provisions of Industrial Disputes Act 1947 since the action of the bank is valid. The question whether the tiny deposit collector for a bank as Nitham Valar Nithi agent is a workman or not has been decided by the Hon'ble Supreme Court in a case reported as (2001) 3 SCC pg 36 INDIAN BANK ASSOCIATION VS WORKMEN SYNDICATE BANK. In that case the Hon'ble Supreme Court has held that *these deposit collectors are workmen within the meaning of section 2(s) of Industrial Disputes Act 1947 and that as seen from Section 2(rr) of the Industrial Disputes Act the commission received by the deposit collectors is nothing else but wage which is dependent on the productivity. This commission is paid for promoting the business of the various banks and that there is clearly a relationship of master and servant between the management and the deposit collectors*. So from this recent decision of the Hon'ble Supreme Court a quietus has been given to the issue whether the tiny deposit collector or Nitham Valar Nithi agent is a workman or not. The learned counsel for the Respondent also has fairly conceded that in view of this decision of the Supreme Court, the Petitioner can be considered as a workman under Industrial Disputes Act.

8 In this Industrial Dispute the Petitioner has questioned the action of the management of Pandyan Grama

Bank in terminating his employment as Nitham Valar Nithi agent as unjustified for the reason that the Respondent/Management has not issued any prior notice of termination, notice pay or compensation which is a violation under section 25F of the Industrial Disputes Act. In the Claim Statement the Petitioner has further asked for the relief that this Hon'ble Court may be pleased to set aside the order dated 2-3-95 and to direct the Respondent to reinstate the Petitioner into service with back wages, continuity of service and all other attendant benefits. In the above cited case the Supreme Court has held that *the persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work and that the mode of selection and qualification are not comparable to those of employees even though the employees may be doing similar work*. In the present case, not only on the mode of selection and qualification not comparable, but even the work is comparable. The work which deposit collectors do is completely different from the work which the regular employees do. There was thus no question of absorption and there was also no question of the deposit collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the banks. So in view of this decision of the Supreme Court, the Petitioner cannot claim to be reinstated in service of the Respondent/Bank. Further, in view of the discontinuation of Nitham Valar Nithi Scheme in the branch where it was found to be economically not viable by the Board of Directors of the Respondent/Bank, the post of Nitham Valar Nithi collection agents will not be available for the Petitioner to reinstate in service as Nitham Valar Nithi collection agent.

9 The Petitioner has requested this Court to pass an order to set aside the order dated 2-3-95 of the Respondent/Management like the order EX W6 sent to the Manager of Kallal branch. A perusal of this letter by Chairman to the Manager of Pandyan Grama Bank regarding stoppage of opening of any fresh Nitham Valar Nithi accounts from 1-4-95 in certain branches of the Bank was a decision taken by Board of Directors of the Respondent/Bank after reviewing the position of economic viability in continuing the scheme any further where the amount outstanding under the scheme is less than Rs 5 lakhs in certain branches. MW1 has also spoken to that effect in his evidence. No contra evidence has been let it by the Petitioner to arrive at a conclusion that the decision taken by the Board of Directors after the discussion at the State level review committee meeting of the bank in respect of the function of Nitham Valar Nithi Scheme in the bank branches is wrong or incorrect. It is not disputed that the Respondent/Bank is a public sector bank and when the Respondent/Bank found this Nitham Valar Nithi Scheme as not economically viable by considering the cost of effectiveness of the scheme it can take a decision to discontinue the same in the branches where the amount outstanding under the scheme is less than Rs 5 lakhs, this action of the Respondent/Bank Management has been taken only in respect of the bank branches where it was found not economically viable to continue the scheme. So under such circumstances, the decision taken by the Respondent/Management and in pursuance of the same a circular has been issued under EX W6 cannot be said to be an incorrect and unjustifiable decision taken by the Respondent/Management. So the question of setting aside the order dated 2-3-95 like EX W6 does not at all arise.

10 In view of the earlier discussions on the basis of the decision of the Supreme Court above cited, the Petitioner can be considered as a workman under provisions of the Industrial Disputes Act, so far as his engagement as tiny desposit collection agent under Nitham Valar Nithi Scheme for the bank branch. That being the position, the non-employment of the Petitioner without any prior notice and compensation can be considered as a violation of Section 25F of the Industrial Disputes Act, 1947 as it is contended by the learned counsel for the Petitioner. In the Counter Statement also, it is the contention of the Respondent/Management that as per the Andhra Pradesh High Court decision at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. Under such circumstances, it can be held that the Petitioner as Nitham Valar Nithi agent has been non-employed because of the stoppage of the scheme in the bank branch on the decision taken by the Respondent/Management is entitled to get retrenchment compensation, as it is held by the Hon'ble Supreme Court in a case reported as AIR 1980 SC 1219 BETWEEN SANTOSH GUPTA AND STATE BANK OF PATIALA. In that case the Hon'ble Supreme Court has held that *compensation shall be payable to workman in case of closure of undertaken as if the workman had been retrenched as it is provided under section 25 (fff) of Industrial Disputes Act, 1947*. It is further observed by the Hon'ble Supreme Court that *the manifest object of these provisions is to so compensate the workman for loss of employment as to provide him the where with all to subsist until he finds fresh employment*. This decision of the Hon'ble Supreme Court is quite applicable to the present facts of this case. Under such circumstances, it can be concluded that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner as Nitham Valar Nithi Collection Agent is justified but the Petitioner is entitled for retrenchment compensation under section 25F of Industrial Disputes Act, 1947. Thus the point is answered accordingly.

11 In the result an Award is passed holding that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner Sri V. Muruganatham as Nitham Valar Nithi Collection Agent is justified. The Respondent/Management is directed to pay the Petitioner/Workman as retrenchment compensation the amount equivalent to the amount he has earned as his commission for the period of one year immediately preceding to his non-employment. No Cost.

(dictated to the Stenographer transcribed and typed by him corrected and pronounced by me in the open court on this day the 28th March, 2002)

K. KARTHIKEYAN Presiding Officer

Witnesses Examined in common for this case and the connected cases —

For the I Party/Workman

WW1 Sri T. Nelson
WW2 Sri Guruviah
WW3 Sri A. Soundarajan
WW4 Sri A. Senthilvel
WW5 Sri T. Chellan
WW6 Sri M. Abdul Rajak
WW7 Sri S. Javamalai Perumal

WW8 Sri Subburaj

WW9 Sri A. L. Ramu

W10 Sri S. Raman

For the II Party/Management MW1 Sri S. Sangilipandi

Documents marked as Exhibits in common for this case and other connected cases —

For the I Party/Workman —

Ex	No	Date	Description
W1	02-03-84		Xerox copy of the appointment letter issued to Sri A. Guruviah
W2	Nil		Xerox copy of the identity card of Mr R. Sankara Narayana Moorthy issued by the Respondent
W3	Nil		Xerox copy of the S.B. passbook of Sri G. Suburaj
W4	21-6-85		Original agreement between Sri T. Nelson workman and Respondent/Management
W5	Nil		Xerox copy of the Nitham Valarnidhu Scheme
W6	02-03-95		Xerox copy of the letter of the Chairman to the Manager, Pandyan Gramma Bank regarding stoppage of Opening of any fresh non-deposit account from 1-4-95 in certain branches
W7	26-06-99		Xerox copy of the circular issued by the Chairman of Bank regarding profits accrued

For the II Party/Management —

Ex	No	Date	Description
M1	31-01-95		Xerox copy of the daily collection list
M2	01-02-95		Xerox copy of the sundry creditor cash voucher
M3	01-11-95 to 07-11-95		Xerox copy of the weekly consolidation register
M4	Nil		Xerox copy of the NVN a/c No. 356 letter extract
M5	27-12-91		Xerox copy of the credit transfer voucher NVN A/c
M6	27-12-91		Xerox copy of the debit cash voucher NVN a/c 92
M7	27-12-91		Xerox copy of the NVN discharged receipt voucher
M8	27-12-91		Xerox copy of the requisition letter for closure of NVN account No. 92
M9	18-02-91		Xerox copy of the NVN specimen card No. 92
M10	18-12-91		Xerox copy of the credit voucher for demand loan
M11	18-12-91		Xerox copy of the debit cash voucher NVN Account
M12	18-12-91		Xerox copy of the NVN discharged receipt

M13	15-12-90	Xerox copy of the NVN Specimen card
M14	03-12-93	Xerox copy of the NVN agent S B A/c No 2149
M15	Nil	Xerox copy of the guidelines for NVN scheme
M16	Nil	Xerox copy of the rules regarding NVN Scheme
M17	Nil	Xerox copy of the model of NVN agency agreement
M18	Nil	Xerox copy of the letter of the Chairman to all Branches To discontinue NVN deposits with list of branches
M19	27-04-93	Xerox copy of the NVN cash receipt
M20	Nil	Xerox copy of the NVN a/c No 607 and 615 ledger copy
M21	Nil	Xerox copy of the letter copy of Mr Nelson's S B Account No 40
M22	22-02-95 to 02-03-95	Xerox copy of the weekly consolidation register
M23	Nil	Extract of S B account pertaining to Mr T Nelson

नई दिल्ली, 5 अप्रैल, 2002

का. आ. 1401.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पांडेयन ग्रामा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/लेबर कोर्ट, चेन्नई के पंचाट (संदर्भ संख्या आई. डी. नं. 467/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-04-2002 को प्राप्त हुआ था।

[सं. एल-12012/62/97-आई.आर.(बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 5th April, 2002

S.O. 1401.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref No. I D No 467/2001) of the Central Government Industrial Tribunal cum Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Pandyan Grama Bank and their workman, which was received by the Central Government on 04-04-2002

[No L-12012/62/97-IR (B 1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 28th March, 2002

Present : K. KARTHIKEYAN,
Presiding Officer

INDUSTRIAL DISPUTE NO. 467/2001

(Tamil Nadu State

Industrial Tribunal I D No 9/98)

[In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10

of the Industrial Disputes Act 1947 (14 of 1947), between the Workman Sri K. Ramasubramanian and the Management of Pandyan Grama Bank, Virudhunagar]

BETWEEN

Sri K. Ramasubramanian

I Party/Workman

AND

The Chairman,

II Party/Management

Pandyan Grama Bank, Virudhunagar

Appearance

For the Workman

M/s PVS Giridhar

Devi Shanker &

R. Srinivasan

Advocates

For the Management

M/s Row & Reddy,

S. Vaidhyanathan &

W T Prabhakar,

Advocates

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No L-12012/62/97/IR (B-1) dated 02-01-98

2 This reference has been made earlier to Tamil Nadu State Industrial Tribunal, Chennai where it was taken on file as I D No 9/98. When the matter was pending enquiry in that Tribunal, the Government of India, Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tamil Nadu State Industrial Tribunal, the case has been taken on file as I D No 467/2001 and notices were sent to the counsel on records on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 01-03-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case by filing their Claim Statement and Counter Statement respectively

3 When the matter came up before me for final hearing on 14-02-2002, upon perusing the Claim Statement, Counter Statement, the other material papers on record, the oral and documentary evidence let in on either side, and after hearing the arguments advanced by the learned counsel on either side, this matter having stood over till this date for consideration, this Tribunal has passed the following —

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt for adjudication by this Tribunal is as follows —

“Whether the action of the Management of Pandyan Grama Bank in terminating the employment of Sri K. Ramasubramanian is justified? If not, what relief the concerned workman is entitled to?”

4 The averments in the Claim Statement of the I Party/Workman Sri K. Ramasubramanian (hereinafter refers to as Petitioner) are briefly as follows —

The Petitioner was appointed as a commission agent in the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) as part of a scheme called Nitham Valar Nithi Scheme, by an order of

appointment dated 03-02-1982. He was appointed as collection agent on prior approval of the Head Office by signing an agreement with the Respondent/Bank. He had furnished a security deposit of Rs 1000/- He was paid commission on the collection made by him at the rate of 3%. He should remit the entire collection made on the previous day into the bank before the banking hours on the next day. If he fails to do so, he will lose 50% of the commission on the amount collected and in case of default exceeding one day, he will lose the entire commission. The workman is taken to task, when any depositor closes the account within a period of six months to twenty four months from the date of opening of the said account. There will be a reduction of the commission payable to the agent in that event. For all acts of commission and omission of the nominee, the collection agent will be responsible and answerable to the bank. The Respondent had issued a letter to the Manager dated 2-3-95 not allowing to open new accounts, if the deposit on the head of 'NVN' account is less than five lakhs. Thus, the number of accounts dwindled with consequent decrease in the earning of the deposit collectors. As such, the Respondents have failed to give work to the Petitioner. Hence, this action of the Respondent in terminating the service of the Petitioner indirectly without giving reasons is arbitrary and unreasonable. The Petitioner filed a petition before the Assistant Labour Commissioner on conciliation seeking to reinstate the Petitioner with back wages and continuity of service. On failure of conciliation efforts taken by the Assistant Labour Commissioner, he submitted a failure of conciliation report to the Government, which in turn referred this matter as an industrial dispute for adjudication by this Tribunal. The impugned order is arbitrary and unreasonable and violative of the Petitioner's rights under Article 14, 16 and 21 of the Constitution. The Division Bench of High Court Madras, in a batch of appeals has held that there is sufficient control over the work of Tiny Deposit Agents by the bank, that the Tiny deposit Agent is a workman as defined in section 2(2) of the Industrial Disputes Act and that such a Tiny Deposit Agent is not an independent contractor but part of the organisation. Though in the letter of appointment issued by the bank to the Petitioner commission was fixed payable to the Petitioner at 3% on the total collection made by the Petitioner each month clause 16 of the agreement provided that the commission could be determined by the bank time to time. As per rule of the scheme, opening of the account should be done only after the supervisory official authorises the same, though the collecting agent is permitted to receive deposits from door to door. This is an important circumstance which shows that the collecting agent is not an independent contractor so as to enrol customers of the bank on his own. The Tiny Deposit Agent is undoubtedly engaged in the business of the bank i.e. the deposit mobilisation. The remuneration of the Tiny Deposit Agent is fixed in the agreement. Though it is called commission, it will still be remuneration as defined by the decisions of the Supreme Court as well as the definition of the wages in the Industrial Disputes Act. The nature of work of the Petitioner demands daily attendance in bank and deposit of the collections made by him on the previous day. The Petitioner has to do some clerical work as he is bound to fill up relevant forms, ledgers, pass books, etc. The Petitioner should furnish a security deposit of Rs 1000/- which will be placed in fixed deposit for a minimum period of three years. The bank can instruct the agent not to enrol new subscribers at any time. The provisions enabling the agent to terminate the agency

on giving the bank a month's notice is the circumstances which goes to show that it is a contract of service. The impugned order of the Respondent does not allow the workmen to open a fresh account under NVN scheme and thereby terminated the services of the Petitioner. The action of the Respondent in terminating the service of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice. The action of the Respondent in terminating the service of the Petitioner is violative of Chapter VA and Chapter VB particularly section 25F of the Industrial Disputes Act. No notice has been served prior to the issuance of the said order, nor was retrenchment compensation paid. The Govt. Ministry of Finance issued a directive not to wind up the said scheme. Many of the nationalised banks which were virtually winding up the said scheme restored it. Therefore, it is proved that this Hon'ble Court may be pleased to set aside the impugned order dated 2-3-95 and direct the Respondent to reinstate the Petitioner in service with back wages, continuity of service and all other attendant benefits.

5. The averments in the Counter Statement filed by the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) are briefly as follows —

The Petitioner was engaged as Nitham Valar Nithi Scheme agent from 03-02-1982. Unlike the regular employees of the bank, he was not paid salary. He was paid only commission depending upon the amount of deposit collected. Unlike the regular bank employees, he was not required to attend the bank daily or sign the attendance register. He was not required to attend to any other work in the bank. His work consisted in collecting tiny deposits and deposit them into the bank the next day. He may not be doing collection work not more than twice a week. He is governed by the Agency agreement. Unlike other employees, he was not subject to the disciplinary control of the bank and there are no fixed hours of work. The Nitham Valar Nithi Scheme was in operation in the Respondent/Bank since 1979. During State Level Review Committee meeting convened by NABARD on 10-01-95 at Madras, this matter was discussed and the Respondent was advised to review the cost factor in continuing Nitham Valar Nithi Scheme. Subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme in the bank as discussed at the State Level Review Committee meeting. On that basis, the Board of Directors of the bank made a review of the scheme and found that the scheme is not economically viable in respect of the branches where the amount outstanding under the scheme is less than Rs 5,00,000. Accordingly, the bank during the Board of Directors meeting held in February, 1995 decided to discontinue the scheme at the branches where Nitham Valar Nithi Scheme deposit outstanding was less than Rs 5 lakhs. When this was implemented, the outstanding under Nitham Valar Nithi Scheme in Pulivara branch was less than Rs 5 lakhs. Moreover, the agency agreement entered into between the bank and the Petitioner clearly states that the bank shall also be at liberty to terminate the agency any time without assigning any reason whatsoever. The Respondent/Bank is a public sector bank which continues to incur heavy loss. When the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same,

the bank had no alternative but to discontinue the scheme at certain branches. When the scheme is withdrawn naturally the agent engaged purely on temporary and commission basis ceased to be engaged further. This has been done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. This by no stretch of imagination can be considered unreasonable arbitrary and violative of rights of the Petitioner. NVN rules provides that the depositor may open the account through the collection agent authorised by the bank in this behalf. Thus, it is clear that the Nitham Valar Nithi agent is free to open an Nitham Valar Nithi account on his own. The Nitham Valar Nithi agents were not the employees of the bank as their relationship with the bank was only that of contract for service and not contract of service. Nitham Valar Nithi agents need not comply with the minimum conditions stipulated for recruitment as employees of the bank such as age, qualification etc. They were engaged purely on commission basis. Even though, he attended collection work in a day, but no collection is effected he would not be paid commission for that day. So, the commission cannot be treated as wages. Quite recently the Andhra Pradesh High Court has held in a case that tiny deposit collectors/Nitham Valar Nithi agents in bank are not workmen. The Nitham Valar Nithi agents come to the branch only when they have to remit the amount they collected towards Nitham Valar Nithi Scheme. He has to fill up only specific forms such as list of accounts in which he had made collection and enter the amount collected in the pass book. Though Nitham Valar Nithi agents were authorised to enter in the passbook, it is not authoritative and it is subject to verification by the bank with the Nitham Valar Nithi ledger. Nitham Valar Nithi agent was not required to attend any other work in the bank. Nitham Valar Nithi agents are not workmen, even assuming so they cannot complain about violation of Section 25F and other provisions of the Industrial Disputes Act, 1947 as the action of the bank is valid as per section 2(o) 2(bb) of the Industrial Disputes Act, 1947. The Petitioner has signed the agreement wherein stipulation No. 5 of the agency agreement states that the bank shall also be at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice. There is no provision in agency agreement saving that notice should be issued to Nitham Valar Nithi agents prior to their termination and also there is no provision in the agreement to pay compensation. Hence, there is no violation of section 25F of the Industrial Disputes Act, 1947. In any event, he cannot claim reinstatement because there was no post of Nitham Valar Nithi agent. It was only an agency between the Petitioner and the bank and the scheme came to be abolished as far as Pulivarai branch is concerned. That is why, the Andhra Pradesh High Court has held at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. For all the reasons mentioned it is prayed that this Hon'ble Tribunal may be pleased to pass an award rejecting the claim of the Petitioner with cost.

6. When the matter was taken up finally for enquiry, the learned counsel appearing on either side represented that a joint trial can be held for this case along with other similar cases, 13 in number. The evidence let in on either side both oral and documentary can be treated as

a common evidence in all these 14 cases. As per their request, a joint trial has been conducted and evidence recorded in these cases along with other cases have been treated as common evidence on either side. Out of the fourteen petitioners of these fourteen cases, ten have been examined as WW1 to WW10 and on the side of the management one common witness has been examined as MW1. For the Petitioner/Workmen seven documents have been marked as E\ W1 to W7 and for the management twenty three documents have been marked as E\ M1 to M23 as common documentary evidence in all these cases. The arguments advanced by the learned counsel on either side was heard.

7. The Point for my consideration is-

"Whether the action of the Management of Pandyan Grama Bank in terminating the employment of Sri K. Ramasubramanian is justified? If not, what relief the concerned workman is entitled to?"

Point -

The Petitioner Sri K. Ramasubramanian has been employed by the management of Pandyan Grama Bank as an agent for collecting amounts from the depositors towards Nitham Valar Nithi, a deposit Scheme introduced by the Respondent/Bank. For that the Petitioner had entered into an agreement with the Respondent/Bank. The Petitioner, as an agent for collecting amount as tiny deposits from the depositors under the said scheme, has to deposit the collected amount into the bank next day. The Petitioner was engaged as such by the Respondent/Bank on commission basis. It is the admission of the Petitioner that he was paid commission on the collection made by him at the rate of 3%. The xerox copy of the S B passbook of the Petitioner wherein the payment of his commission has been credited. The Petitioner was engaged for the Pulivarai branch of the Respondent/Bank as a collection agent for tiny deposits under Nitham Valar Nithi Scheme. The Respondent/Management had sent a letter dated 23.9.95 to the Managers' of certain branches of the Respondent/Bank informing that as per the advice given by NABARD in the meeting held on 10.1.95 at Madras, the Board of management of Respondent/Bank has also resolved to discontinue the Nitham Valar Nithi Scheme in the branches, where the outstanding is less than 5,00,000/- as on 31-1-95 and advice the branch not to open any fresh Nitham Valar Nithi account from 1.4.95 and to continue the existing Nitham Valar Nithi accounts in the maturity/closure of period/accounts. The xerox copy of that letter sent to the Manager of Koomapattu branch of Pandyan Grama Bank is E\ W6 as it is sent to Pulivarai branch. In pursuance of the same the Manager of the said branch of the Respondent/Bank, informed the Petitioner's a collecting agent under Nitham Valar Nithi Scheme not to open new accounts and thereby the Petitioner was not given work by the Respondent/Bank. This non-employment of the Petitioner has been mentioned by the Petitioner in his Claim Statement as termination of his service indirectly without giving reasons and it is arbitrary and unreasonable. It is the contention of the Respondent/Management in their Counter Statement that during state level review committee meeting convened by NABARD on 10.1.95 at Madras, the matter was discussed and the management of the Respondent/Bank was advised to review the cost factor in continuing Nitham Valar Nithi Scheme and subsequently, NABARD

suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme with the bank as discussed at the State level Review Committee meeting and Board of Directors of the bank made review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs.5 lakhs and accordingly, the Board of Directors decided to discontinue the scheme in the branches, where the Nitham Valar Nithi deposits outstanding is less than Rs.5 lakhs. It is further contended in the Counter Statement that the Respondent/Bank is a public sector bank, which continues to incur heavy loss and that when the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches and that when the scheme is withdrawn, naturally the agents engaged purely on temporary and commission basis ceased to be engaged further and that was done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. Hence, it cannot be considered as unreasonable, arbitrary, and in violation of the rights of the Petitioner. It is admitted that because of the decision taken by the Board of Directors of the Respondent/Bank Management Nitham Valar Nithi Scheme has been discontinued by the Respondent/Management when found that the Nitham Valar Nithi deposit outstanding was less than Rs.5 lakhs and that scheme is not economically viable in those branches and in pursuance of the stoppage of the scheme, the Petitioners who were engaged as Nitham Valar Nithi deposit collection agents were non-employed by the Respondent/Bank. It is the contention of the Petitioner that it amounts to termination of service and hence the action of the Respondent/Management in terminating the services of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice and also a violation of Section 25F of Industrial Disputes Act. It is further contended that the Division Bench of High Court of Madras has held in a batch of Writ Appeal that *'the tiny deposit agent is a workman as defined in Section 2(s) of the Industrial Disputes Act and he is not an independent contractor but part of the organisation.'* The Respondent would contend that Andhra Pradesh High Court in a decision reported in Vol. 93 (1998) FJR 144 has held that tiny deposit agents (Nitham Valar Nithi agents) in bank are not workmen and as per the agency agreement, the bank shall also at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice as there is no provision in the agreement to pay compensation and to give notice to the Nitham Valar Nithi agent prior to the termination. There is no violation of section 25F of Industrial Disputes Act and that Nitham Valar Nithi agents are not workmen and the Petitioner cannot complaint about the violation of Section 25F and other provisions of Industrial Disputes Act, 1947, since the action of the bank is valid. The question whether the tiny deposit collector for a bank as Nitham Valar Nithi agent is a workman or not has been decided by the Hon'ble Supreme Court in a case reported as (2001) 3 SCC pg.36 INDIAN BANK ASSOCIATION VS. WORKMEN SYNDICATE BANK. In that case the Hon'ble Supreme Court has held that *'these deposit collectors are workmen within the meaning of section*

2(s) of Industrial Disputes Act, 1947 and that as seen from Section 2(rr) of the Industrial Disputes Act, the commission received by the deposit collectors is nothing else but wage which is dependent on the productivity. This commission is paid for promoting the business of the various banks and that there is clearly a relationship of master and servant between the management and the deposit collectors'. So from this recent decision of the Hon'ble Supreme Court a quietus has been given to the issue whether the tiny deposit collector or Nitham Valar Nithi agent is a workman or not. The learned counsel for the Respondent also has fairly conceded that in view of this decision of the Supreme Court, the Petitioner can be considered as a workman under Industrial Disputes Act.

8. In this industrial dispute the Petitioner has questioned the action of the management of Pandyan Grama Bank in terminating his employment as Nitham Valar Nithi agent as unjustified for the reason that the Respondent/Management has not issued any prior notice of termination, notice pay or compensation which is a violation under section 25F of the Industrial Disputes Act. In the Claim Statement the Petitioner has further asked for the relief that this Hon'ble Court may be pleased to set aside the order dated 2.3.95 and to direct the Respondent to reinstate the Petitioner into service with back wages, continuity of service and all other attendant benefits. In the above cited case, the Supreme Court has held that *'the persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work and that the mode of selection and qualification are not comparable to those of employees even though the employees may be doing similar work.'* In the present case, not only on the mode of selection and qualification not comparable, but even the work is comparable. The work which deposit collectors do is completely different from the work which the regular employees do. There was, thus, no question of absorption and there was also no question of the deposit collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the banks. So, in view of this decision of the Supreme Court, the Petitioner cannot claim to be reinstated in service of the Respondent/Bank. Further, in view of the discontinuation of Nitham Valar Nithi Scheme in the branch where it was found to economically not viable by the Board of Directors of the Respondent/Bank, the post of Nitham Valar Nithi collection agents will not be available for the Petitioner to reinstate in service as Nitham Valar Nithi collection agent.

9. The Petitioner has requested this Court to pass an order to set aside the order dated 2.3.95 of the Respondent/Management like the order Ex. W6 sent to the Manager of Puliyarai Branch. A perusal of this letter by Chairman to the Manager of Pandyan Grama Bank regarding stoppage of opening of any fresh Nitham Valar Nithi accounts from 1-4-95 in certain branches of the Bank was a decision taken by Board of Directors of the Respondent/Bank after reviewing the position of economic viability in continuing the scheme any further, where the amount outstanding under the scheme is less than Rs. 5 lakhs in certain branches. MW1 has also spoken to that effect in his evidence. No contra evidence has been let in by the Petitioner to arrive at a conclusion that the decision taken by the Board of Directors, after the discussion at the State level review committee meeting of the bank in respect of the function of Nitham Valar Nithi Scheme in the bank

branches is wrong or incorrect. It is not disputed that the Respondent/Bank is a public sector Bank and when the Respondent/Bank found this Nitham Valar Nithi Scheme as not economically viable by considering the cost of effectiveness of the scheme, it can take a decision to discontinue the same in the branches where the amount outstanding under the scheme is less than Rs 5 lakhs. this action of the Respondent/Bank Management has been taken only in respect of the bank branches where it was found not economically viable to continue the scheme. So under such circumstances, the decision taken by the Respondent/Management and in pursuance of the same a circular has been issued under Ex W6 cannot said to be an incorrect and unjustifiable decision taken by the Respondent/Management. So, the question of setting aside the order dated 2-3-95 like Ex W6 does not at all arise.

10 In view of the earlier discussions on the basis of the decision of the Supreme Court above cited, the Petitioner can be considered as a workman under provisions of the Industrial Disputes Act, so far as his engagement as tiny deposit collection agent under Nitham Valar Nithi Scheme for the bank branch. That being the position, the non-employment of the Petitioner without any prior notice and compensation can be considered as a violation of Section 25F of the Industrial Disputes Act, 1947 as it is contended by the learned counsel for the Petitioner. In the Counter Statement also, it is the contention of the Respondent/Management that as per the Andhra Pradesh High Court decision at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. Under such circumstances, it can be held that the Petitioner as Nitham Valar Nithi agent has been non-employed because of the stoppage of the scheme in the bank branch on the decision taken by the Respondent/Management is entitled to get retrenchment compensation, as it is held by the Hon'ble Supreme Court in a case reported as AIR 1980 SC 1219 between Santosh Gupta and State Bank of Patiala. In that case, the Hon'ble Supreme Court has held that 'compensation shall be payable to workman, in case closure of undertaking as if, the workman had been retrenched, as it is provided under section 25 (fff) of Industrial Disputes Act, 1947. It is further observed by the Hon'ble Supreme Court that the manifest object of these provisions is to so compensate the workman for loss of employment as to provide him the where with all to subsist until he finds fresh employment'. This decision of the Hon'ble Supreme Court is quite applicable to the present facts of this case. Under such circumstances, it can be concluded that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner as Nitham Valar Nithi Collection Agent is justified, but the Petitioner is entitled for retrenchment compensation under section 25F of Industrial Disputes Act 1947. Thus, the point is answered accordingly.

11 In the result, an Award is passed holding that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner Sri K. Ramasubramanian as Nitham Valar Nithi Collection Agent is justified. The Respondent/Management is directed to pay the Petitioner/Workman as retrenchment compensation, the amount equivalent to the amount he has earned as his commission for the period of one year immediately preceding to his non-employment. No Cost.

(Dictated to the Stenographer, transcribed and typed by him corrected and pronounced by me in the open court on this day the 28th March, 2002)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined in common for this case and the connected cases —

For the I Party/Workman

WW1	Sri T. Nelson
WW2	Sri Guruviah
WW3	Sri A. Soundarajan
WW4	Sri A. Senthilvel
WW5	Sri T. Chellan
WW6	Sri M. Abdul Rajak
WW7	Sri S. Jayamalai Perumal
WW8	Sri Subburaj
WW9	Sri A. L. Ramu
WW10	Sri S. Raman

For the II Party/Management

MW1	Sri S. Sangilipandi
-----	---------------------

Documents marked as Exhibits in common for this case and other connected cases —

For the I Party/Workman —

Ex No	Date	Description
W1	02-03-84	Xerox copy of the appointment letter issued to Sri A. Guruviah
W2	Nil	Xerox copy of the identity card of Mr R. Sankara Narayana Moorthy issued by the Respondent
W3	Nil	Xerox copy of the S.B. passbook of Sri G. Suburaj
W4	21-6-85	Original agreement between Sri T. Nelson, workman and Respondent/Management
W5	Nil	Xerox copy of the Nitham Valar Nithi Scheme
W6	02-03-95	Xerox copy of the letter of the Chairman to the Manager, Pandyan Grama Bank regarding stoppage of Opening of any fresh non-deposit account from 1-4-95 in certain branches
W7	26-06-99	Xerox copy of the circular issued by the Chairman of Bank regarding profits accrued

For the II Party/Management —

Ex No	Date	Description
M1	31-01-95	Xerox copy of the daily collection list
M2	01-02-95	Xerox copy of the sundry creditor cash voucher
M3	01-11-95 to 07-11-95	Xerox copy of the weekly consolidation register
M4	Nil	Xerox copy of the NVN A/c No. 356 ledger extract
M5	27-12-91	Xerox copy of the credit transfer voucher NVN A/c
M6	27-12-91	Xerox copy of the debit cash voucher NVN A/c 92
M7	27-12-91	Xerox copy of the NVN discharged receipt voucher

M8	27-12-91	Xerox copy of the requisition letter for closure of NVN Account No 92
M9	18-02-91	Xerox copy of the NVN Specimen Card No 92
M10	18-12-91	Xerox copy of the credit voucher for demand loan
M11	18-12-91	Xerox copy of the debit cash voucher NVN Account
M12	18-12-91	Xerox copy of the NVN discharged receipt
M13	15-12-90	Xerox copy of the NVN Specimen card
M14	03-12-93	Xerox copy of the NVN agent S B A/c No 2149
M15	Nil	Xerox copy of the guidelines for NVN Scheme
M16	Nil	Xerox copy of the rules regarding NVN Scheme
M17	Nil	Xerox copy of the model of NVN agency agreement
M18	Nil	Xerox copy of the letter of the Chairman to all Branches To discontinue NVN deposits with list of branches
M19	27-04-93	Xerox copy of the NVN cash receipt
M20	Nil	Xerox copy of the NVN A/c No 607 and 615 ledger copy
M21	Nil	Xerox copy of the ledger copy of Mr Nelson's S B Account No 40
M22	22-02-95 to 02-03-95	Xerox copy of the weekly consolidation register
M23	Nil	Extract of S B account pertaining to Mr T Nelson

नई दिल्ली, 5 अप्रैल, 2002

का.आ. 1402.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार वेस्टर्न रेलवे, के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण सं 2, मुम्बई के पंचाट (संदर्भ संख्या सीजीआईटी-2/10 ऑफ 99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 4-4-2002 को प्राप्त हुआ था।

[सं. एल-41012/51/98-आई आर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 5th April, 2002

S.O. 1402.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref No CGIT-2/10 of 99) of the Central Government Industrial Tribunal No II, Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Western Railway and their workman, which was received by the Central Government on 4-4-2002

[No L-41012/51/98-IR (B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO II, MUMBAI

PRESENT

S. N. SAUNDANKAR
Presiding Officer

REFERENCE NO CGIT-2/10 of 1999
EMPLOYERS IN RELATION TO THE MANAGEMENT OF

WESTERN RAILWAY

The Divisional Railway Manager (E)

Divisional Office

Western Railway Bombay Central

Mumbai-400 008

AND

Their Workmen

Shri Raoji Ugaliya C/o

LB Upadhyaya

30-31 Pragati Shopping Centre.

Daftary, Malad (East)

Mumbai-400 097

APPEARANCES

FOR THE EMPLOYER Ms D Fernandes, holding for
Mr Suresh Kumar, Advocate

FOR THE WORKMEN Shri Jai Prakash Sawant,
Advocate

Mumbai, dated 18th January,
2002

AWARD PART-I

The Government of India, Ministry of Labour, by its Order No L-41012/51/98/IR(B-1) dtd 31-12-1998, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, have referred the following dispute to this tribunal for adjudication

“Whether the action of the management of Western Railway is justified in terminating the services of Shri Raoji Ugaliya. If not, to what relief the workman is entitled to?”

2 Workman, Shri Ugaliya was appointed as a Gangman and then promoted as Senior Gangman while serving at Palghar, Dahanu in 1990. He has contended by his Statement of Claim (Exhibit-6) that he was employed infact somewhere in the year 1969. However, by mistake the railway authority mentioned his date of appointment 31-7-90. It is contention of workman that he is an adivasi, understands only adivasi language. He is illiterate, puts thumb impression. His immediate senior had obtained his thumb impressions on several documents under the guise that the same are required under the service rules. It is contended that he does not understand any Language other than adivasi. He was not understanding the procedure

He was sick and therefore he had taken leave. In the year 1990, he remained absent for only 10 days for which he had produced certificate. However, the same was not taken by his immediate officer. In the year 1995 when he came to report on duty, he was not allowed to join duty and then he came to know that he has been illegally removed from the service w.e.f. 22-12-94. It is his contention that he was not given opportunity for hearing, the inquiry held, was against the Principles of Natural Justice, he did not understand the procedure. He was not given inquiry proceedings nor he was intimated the dates of inquiry. Therefore inquiry is unfair and though he was not absent showing the same he has been illegally terminated. He had resisted the same apprising to A.L.C. (C) by the letter dtd. 4-11-96, however, in vain. It is his contention that inquiry being unfair needs to be set aside.

3 Management Western Railway, opposed the claim of workman by filing Written Statement (Exhibit-7), contending that the railway is non-profit making activity. The functions performed by it are welfare measure, to its citizens. Railway services are governed by the Ministry of Railways and that it is the Government service, under the constitution and therefore it is not an 'industry'. It is further contended that the applicant is a Government servant/Civil servant. His services are governed under the constitution under Article-309. It is contended applicant Ugaliya being a Government servant is not a 'workman' and for all these reasons, the reference is not maintainable. It is contended by the railway that Ugaliya remained absent unauthorisedly during his entire service for 2152 days in broken spells. His absence was unauthorised and therefore the inquiry was conducted against him, under the Railway Service Discipline Rules, 1968. He was given chargesheet dtd. 21-10-92 intimating his absence, but he did not attend the inquiry which was fixed on 8-8-94. It is contended on the application of Ugaliya he was given dates of hearing, but, he did not engage Defence Counsel. According to railway management, Ugaliya was appointed as a casual labour, Khalasi on 29-3-79, and had attained temporary status on 29-7-79 and thereafter he was regularised as gangman vide order dtd. 31-7-90. It is contended, inquiry officer found the workman guilty for remaining absent unauthorisedly and therefore on the basis of the report Shri Ugaliya was removed from service on 22-12-94 and that appeal made by Shri Ugaliya dtd. 28-4-95 was rejected on 5-9-95 and that representation against that filed on 4-11-96 was turned down on 12-2-97. It is contended, that the inquiry was properly held under the Railway Services (Appeal and Discipline) Rules, 1968. Therefore the same need not be set aside.

4 By the Rejoinder (Exhibit-10) workman reiterated the recitals in the Statement of claim denying the contentions in the Written Statement. He has contended that he was never explained the contents in the inquiry proceedings nor he was made to understand the same, and was unable to defend the inquiry. It is contended that on the basis of his thumb impression he has been made a scape goat.

5 On the basis of the pleadings may Learned Predecessor framed issue (Exhibit-9) and in the light of the preliminary issues workman Raoji Ugaliya, filed affidavit by way of Examination-in-Chief (Exhibit-12) and closed

evidence vide purshis (Exhibit-17) Management, Western Railway did not lead oral evidence vide purshis (Exhibit-20).

6 Workman filed written submissions (Exhibit-22) along with copy of the rulings and the management (Exhibit-23) with the copies of the rulings (Exhibit-24). On perusing the record as a whole and hearing the counsels I record my findings on the following preliminary issues for the reasons stated below.

Issues	Findings
1 Whether the domestic inquiry which was conducted against the workman was against the Principles of Natural Justice?	Yes
2 Whether the findings of the inquiry officer are perverse?	Yes
3 Whether the reference is maintainable in view of the pleadings in the W.S.?	Yes

REASONS

7 At the threshold, the Learned Counsel for the management, Western Railway submits that Shri Ugaliya is a Government Servant/Civil Servant. His services are governed under Article 309 of the Constitution, therefore he is not a 'workman' under Section 2(s) of the Industrial Disputes Act and further he contended that railway is not profit making activity, it is a welfare activity. Functions performed by it are sovereign function and therefore it is not an 'industry' under Section 2(J) of the said Act. On the other hand, the Learned Counsel Mr. Sawant for the workman submits that in plethora of judgments it is held that railway is an industry. In *Robert D'Souza Vs Executive Engineer, Southern Railway* 1982 II LLJ pg. 330, para 25, clearly pointed out that railway is an industry. His Lordship of the Bombay High Court in *CST Mumbai Vs Rajankumar Moalik* 2000 III CLR pg. 117 in para 4 clearly held that the Industrial Tribunal has jurisdiction since Section 15 of the Administrative Tribunal Act ousts the jurisdiction of the Civil Court and confer the same on the Tribunal created under it. His Lordships of Bombay High Court recently in Writ Petition No. 1751/1999 by the order dtd. 11-10-2001 while deciding an application filed against the railway department under Section 33 C(2) of the Industrial Disputes Act ruled that railway is an industry. In view of the above said decisions it is apparent that the railway is an industry and that Ugaliya is a workman and consequently reference is maintainable. Therefore issue No. 3 is answered accordingly.

8 So far the domestic inquiry held against the workman Shri Ugaliya is concerned, according to him as seen from the affidavit (Exhibit-12) he is illiterate, he belongs to adivasi community. He was not given opportunity to explain the position. According to him management played a trick to remove him from service by hook or crook. He was not informed on the procedure of the inquiry and that on the basis of his thumb impressions taken on some documents, he has been singled out and thereby the inquiry is unfair.

9 By way of written Statement, management contended that during the entire service workman remained absent unauthorisedly for 2152 days in broken spells. Therefore, he was given charge-sheet and that inquiry was

held giving opportunity to him, but the workman who is at fault and therefore the inquiry cannot be said to be unfair. On perusal of the inquiry proceedings filed with list (Exhibit-8) It is seen the entire correspondence was in English, chargesheet was in English, statements were recorded in English and that the entire proceedings was in English. It is the contention of Ugaliya, workman that he does not know any other language other than adivasi. He was not made to understand the procedure nor translated the procedure in his language. On perusal of the record it is seen workman puts thumb-mark. Nothing to show that during the inquiry translator was appointed. Management did not examine any witness to throw light that the procedure was explained and it was understood by the workman. The rules of Natural Justice are to be observed in the conduct of domestic inquiry. If the allegations are denied by the workman the burden of proving the truth of those allegations is on the management. Their Lordships in Abujam Amuba Singh Vs State of Manipur 2000 LAB IC 498 observed

"Further the Supreme Court pointed out that in an enquiry where the department is represented by a Presenting Officer, it would be the duty of the delinquent Officer more particularly where he is a class IV Government servant whose educational equipment is such as would lead to an inference that he may not be aware of technical rules prescribed for holding inquiry that he is entitled to be defended by another government servant of his choice. If the government servant declined to avail of the opportunity the inquiry would proceed. But if the delinquent officer is not informed of his right and an overall view of the joint inquiry of the delinquent and his superior officer shows that the delinquent Government Servant was at a comparative disadvantage compared to the disciplinary authority represented by the Presenting Officer and a superior officer, co-delinquent is also represented by an officer of his choice to defend him, the absence of anyone to assist such a Government servant belonging to the lower echelons of service would unless it is shown that he had not suffered any prejudice vitiate the enquiry. In fact justice and fairplay demand that where in a disciplinary proceeding the department is represented by a Presenting Officer it would be incumbent upon the disciplinary authority while making appointment of a Presenting Officer to appear on his behalf simultaneously to inform the delinquent of the fact of appointment and the right of the delinquent to take help of another Government servant before the commencement of inquiry. At any rate the inquiry officer atleast must enquire from the delinquent officer whether he would like to engage anyone from the department to defend him and when the delinquent is a Govt. servant belonging to the lower echelons of service he would further be informed that he is entitled under the relevant rules to seek assistance of another Government servant belonging to department represent him. If after this information is conveyed to the delinquent Government servant he still chooses to proceed with the inquiry without obtaining assistance one can say there is substantial compliance with the rules. That is what has happened in this particular case. The petitioner herein studied only up to Class VIII and that too also in Manipuri language and the inquiry was conducted

by the authority in English. So, it can be very well seen that the petitioner suffered prejudice on this ground also."

10 In the instant case the workman is a gangman, illiterate adivasi not knowing any other language than adivasi. However, as seen from the record inquiry was conducted in English. Relying on the above said decision in the context contention of workman that his thumb impressions were obtained by his immediate senior under the guise 'those required under the service rules', it can safely be said that prejudice is caused to the workman in view of the position. Therefore the inquiry can be said to be vitiated.

11 So far the findings of the inquiry officer are concerned since inquiry vitiates on material aspects, there is no need for the tribunal to record any finding regarding perversity for which reliance can be had to CST Mumbai Vs Rajan Kumar Mohlaik 2000 III CLR pg 117. Assuming finding is necessary to be given, on going through the record as a whole in the context of allegation of workman that his thumb impressions were obtained by his senior on the pretext referred to above findings can be said to be perverse. In view of this issue No 1 & 2 are answered in the affirmative and hence the order —

ORDER

The domestic inquiry conducted against the workman was not as per the Principles of Natural Justice.

The findings of the inquiry officer are perverse. Management is allowed to lead evidence to justify its action.

S N SAUNDANKAR Presiding Officer

नई दिल्ली, 5 अप्रैल, 2002

का.आ. 1403.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेन्ट्रल रेलवे के प्रबन्धन के सबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबन्ध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण स 2, मुम्बई के पचाट (सदर्थ सख्या सीजीआईटी-2/21 ऑफ 97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-04-2002 को प्राप्त हुआ था।

[स एल-41012/57/96-आई आर (बी-1)]

अजय कुमार डेस्क अधिकारी

New Delhi the 5th April 2002

S.O. 1403.—In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947) the Central Government hereby publishes the award (Ref No CGIT-2/21 of 97) of the Central Government Industrial Tribunal II Mumbai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Central Railway and their workmen which was received by the Central Government on 04-04-2002.

[No L-41012/57/96-IR (B-1)]

AJAY KUMAR Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL NO. II, MUMBAI

PRESENT

S.N. SAUNDANKAR

Presiding Officer

REFERENCE NO CGIT-2/21 of 1997
EMPLOYERS IN RELATION TO THE MANAGEMENT
OF CENTRAL RAILWAY, BHUSAWAL

The Divisional Railway Manager,

Central Railway, Bhusawal (M S)

AND

Shri Ashok Kondaji Ghodke,

C/o D K Kulkarni,

Rly Qr No R B -II,

Yetola Road,

Manmand (Maharashtra)

APPEARANCES

FOR THE EMPLOYER Ms D Fernandes, holding for
Mr Suresh Kumar,
Advocate

FOR THE WORKMEN Mr M B Anchan Advocate
Mumbai, dated 16th January,
2002

AWARD

The Government of India Ministry of Labour, by its Order No L-41012/57/96/IR (B-1), dtd 23-06-1997, in exercise of the powers conferred by clause (d) of Sub-section(1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, have referred the following dispute to this tribunal for adjudication

"Whether the action of the management of Central Railway Bhusawal in discontinuing/not taking Shri Ashok Ghodke MRCL on duty from 8-2-87 and absorbing regularising his co-workers/Juniors to him after conducting the screening test in subsequent years is justified and legal? If not, to what relief Shri Ashok Ghodke is entitled and from which date and what other direction are necessary in the matter?"

AND

"Whether the action of the management of Central Railway Bhusawal in turning down the request of Shri Ashok Ghodke M R C L for appointment on compassionate grounds, vide their letter No BHL/P/Bharati/C G /IV dated 1-11-88 (In Hindi) is justified and proper? If not, to what relief the concerned person is entitled to and from which date?"

2 Shri Ashok Ghodke, worked in Central Railway, Bhusawal from 1977 to 1987, in Class-IV category By Statement of Claim (Exhibit-2). Ghodke contended that he worked as a casual labourer in Central Railway, Bhusawal Division from 28-2-1977 to 1983 and monthly rated casual labourer on regular pay from 1984-1987. However, suddenly without any reason he has been discontinued in 1987 and that the workers who were junior to him were absorbed in permanent category and that he was not considered which

is illegal. It is his contention that, his father was in railway department who expired in service in 1973. He had requested for employment on compassionate ground, however, it was turned down/rejected which act is also improper on the part of the railway administration. He has been consistently pursuing but in vain. Therefore he contended management railway be directed to reinstate him with full back wages.

3 Management Central Railway, opposed the claim of Shri Ashok Ghodke by filing Written Statement (Exhibit-7), contending that the railway is not an 'industry' since it is performing Governmental function, which are statutory in nature. It is contended railway services are of welfare measure, non profit motive, therefore Ghodke is not a 'workman' within the meaning of Section 2(s) and the railway is not an 'industry' under section 2(J) of the Industrial Disputes Act and therefore this Tribunal has no jurisdiction to entertain and decide the reference. It is contended that Ghodke was working as a casual labourer on casual basis in Bhusawal Division from 28-2-1977 to 9-2-1987 in broken period, and he had completed 1151 days. He was working in locoshed, which was later on abolished. The workers who according to Ghodke were junior, were not infact junior, but, senior to him, and that they were in service in 1991, when they were regularised. It is contended Ghodke was not in regular basis and there was no work, his services were terminated w e f 3-87. It is the contention of management that Ghodke's father, died due to sickness. His normal age of retirement was 58 years, however, he was continued till his age of 60 years, on the physical fitness, therefore, the benefit of compassionate ground cannot be extended to Shri Ghodke under the rules. It is contended, Ghodke was discontinued, on 8-2-87, and that reference came to be filed in 1997, after about 10 years which suffers from delay and laches, consequently not maintainable. He was called for screening on 21-4-95 but was not found suitable for absorption in TRS by the Screening Committee. For all these reasons management prayed to reject the claim of Shri Ghodke.

4 On the basis of the pleadings my Learned Predecessor framed issues at (Exhibit-8). Ashok Ghodke filed his affidavit by way of Examination-in-Chief (Exhibit-9) and closed evidence vide purshis (Exhibit-12). Divisional Personnel Manager, Mr A K Dayama, filed affidavit on behalf of the management by way of Examination-in-Chief (Exhibit-15) and management closed evidence vide purshis (Exhibit-20).

5 Ghodke filed written submissions (Exhibit-21) and in management (Exhibit-22) and the rulings with list (Exhibit-23/23A). On perusing the record as a whole and hearing the counsels, I record my findings on the following issues for the reasons mentioned below

Issues	Findings
1 Whether the management of Central Railway Bhusawal discontinued/not taken on duty Ashok Ghodke on duty from 8-2-87?	Yes
2 Whether the management absorbed/regularised his co-workers/juniors to him after conducting the screening tests in subsequent years?	No
3 Is Ghodke entitled to any reliefs?	No
4 Whether the action of the management turning down the request of Godke to appoint him on compassionate ground is justified and proper?	Yes

- | | | |
|---|---|--------------------|
| 5 | If not, to what relief the concerned person is entitled to and from which date? | As per order below |
| 6 | Whether the reference suffers from laches? | No |
| 7 | Whether the Tribunal had jurisdiction to decide the reference? | Yes |

REASONS

6 At the outset the Learned Counsel for the Railway submits that Railway is not an 'industry' under section 2(j) of the Industrial Disputes Act and therefore this Tribunal has no jurisdiction to entertain and decide the reference. In catena of Judgments, it is held that railway is an industry and that jurisdiction has been conferred upon the Tribunal created by statute to deal with specified subjects which would not be excluded by virtue of Section 14 of the Administrative Tribunals Act. Their Lordships in Krishna Prasad Gupta Vs Controller 1996 SCC (L&S) 264, in para 22, observed

"It is therefore apparent that in respect of Section 14 of the Act jurisdiction of the Industrial Tribunal/Labour Courts/Other authorities under the Industrial Disputes Act or authority credited by any other corresponding law remains unaffected"

In C S T, Mumbai Vs Rajan Kumar Mohalik 2000 III CLR pg 117 His Lordship clearly pointed out referring the case of Robert D'Souza Vs Executive Engineer Southern Railway that railway is an industry. Recently in Writ Petition No 1751/99 Their Lordships of Bombay High Court on 11-10-2001 while deciding the matter of railway, clearly ruled that Tribunal has jurisdiction to decide the Industrial Disputes pertaining to railway. It is therefore apparent that railway is an industry and therefore this Tribunal has jurisdiction to decide the reference. Therefore issue No 7 is answered accordingly.

7 It is urged by Learned Counsel for Management, inviting attention of this Tribunal to the proceedings that Ghodke was discontinued in 1987 and that the reference came to be filed in 1992 i.e. after about 10 years and that the reference suffers from delay/laches and therefore not maintainable. It is since beginning the contention of Ghodke that he is pursuing the matter, but, his efforts have become futile. It is clearly seen from the record, immediately after his discontinuation, by the applications dt'd 13-7-89, 15-10-90 and thereafter all these years he had moved the concerned railway department and eventually the A L C (C) in 1995. Record further shows that the A L C (C), when Ghodke raised dispute with the management, tried conciliation but ended in failure. Management in their Written Statement para 14 itself pointed out that Ghodke appealed the railway in the year 1992-93 for his absorption, which was turned down. This clearly shows that Ghodke since beginning pursued his discontinuation of service. It is not that he was inactive. Needless to say, the object of the act is to improve the service conditions of industrial labour so as to provide them the ordinary amenities of life and by the process to bring about industrial peace which would on its term accelerate productivity activity of the country resulting in its prosperity. Their Lordships of Supreme Court in Ajaib Singh Vs Sirhind Co-operative Marketing cum Processing service Society Ltd & Anr JT 1999 (3) SC 38 observed

"The Act was brought on the statute book with the object to ensure social justice to both the employers and employees and advance the progress of industry. It is a piece of legislation providing and regulating the service conditions of the workers."

The provisions of the Act have to be interpreted in a manner which advance the object of the legislature. While construing the provisions of the Act, the court have to give them a construction which would help in achieving the object. Their Lordships of Apex Court in Indian Iron and Steel Company Limited Vs Pralhad Singh 2001 SCC (L&S) pg 239 pointed out "Whether relief can be declined on the ground of delay and laches, depends on the facts and circumstances of each case" thirteen years unexplained delay had accrued in the above cited case therefore, Their Lordships held the said reference was untenable. In A J Fernandes Vs Divisional Manager Central Railway 2001 SCC (L&S) pg 217 Their Lordships dismissed the claim due to four years delay. Considering the facts and circumstances mentioned above it is seen since beginning Ghodke is pursuing the cause and that the facts in the present case being different to the facts of the case referred to above, hardly can be said that the reference suffers from laches and delay. Consequently Issue No 6 is answered in the negative.

8 Once it is clear that this Tribunal has jurisdiction to decide the reference and that it does not suffer from laches point arises "Whether action of discontinuation of Mr Ghodke from 8-2-87 is proper?" Management's witness Mr Davama in his cross-examination para 8 clearly admits that Ghodke worked as a casual labour from 28-2-77 to 9-2-87. According to Ghodke from 28-2-77 till 3-12-78 he worked with break as a casual labour in (Running Room Bearer) under the Assistant Traction foreman Electrical Department, Central Railway, Nandgaon and that from 4-8-83 to 6-5-84 he was re-employed as a Running Room Bearer and added that he was absorbed as a monthly rated substitute casual labour from 7-5-84 and from that date, he worked continuously without any break till 8-2-87 and from 9-2-87 he was not given work. He has given details on his working period in his written submissions (Exhibit-21). The Learned Counsel Mr Anchan submits that Ghodke was given some artificial breaks, however, thereafter he was in continuous service and therefore provisions of Section 25 F though applicable, not complied with. He submits that from 7-5-84 to 8-2-87 Ghodke was in continuous service, without break. Ghodke has filed service particulars furnished by Central Railway, Nandgaon, pg 2, with annexures enclosed with Statement of Claim which finds place in the Written Submissions, para 2. On plain reading of this, it is seen in 1984 he worked about 152 days, in the year 1985 about 310 days, in 1986 about 345 days with break. Under section 25B workman should have completed 240 days within a block of 12 calendar months commencing backward from the date of alleged termination. It is held in Himanshu Kumar Vidvarthi Vs State of Bihar AIR 1997 SC 3657 the daily wage employee whose services were engaged on the basis of need of work, termination of such employee cannot be construed to be retrenchment. In Sur Enamel and Stamping Works Vs Their Workmen SCC II LLJ 367 Their Lordships observed

"Where the worker was employed only for eleven months the fact that during such a period of 11 months he had worked more than 240 days would not entitle him to get the benefit of Section 25 F of the said Act."

Therefore though Ghodke worked in the years 1985 & 1986 for more than 240 days since he did not work continuously he is not entitled to benefits under section 25 F of the said Act.

9. According to Ghodke he was discontinued and not taken on duty on 8-2-87. According to management since Loco shed was abolished Ghodke was discontinued. Ghodke stated that his junior co-workers viz. Anna Hari, Bhanudas Pandurang, Hariprasad Kalidas and Suresh Dajju were absorbed/regularised, however, he was not regularised. At this juncture, the Learned Counsel for Management submits that if Ghodke comes with a case on regularisation then the reference itself is not maintainable under section 2A of the Industrial Disputes Act as only in case of discharge, dismissal the concerned employee can independently pursue his cause. It is clearly seen from the record Shri Ghodke was discontinued from 8-2-87 which itself indicate that management from that day, dismissed Shri Ghodke and therefore his cause rightly comes under section 2(A) of the Industrial Disputes Act. In view of this I find no substance in the above said submission of learned Counsel from Management. So far the regularising the service of the juniors. Mr. Ghodke admits in cross examination para. 7 that, workers Hariprasad worked for 1924 days and Suresh 1287 days, whereas he worked for 1151 days. That means, both Hariprasad and Duresh worked more than Ghodke, thereby they were senior to Ghodke. So far screening test is concerned, it was taken place in 1991/92 when Ghodke was not in the employment of railway, therefore question of calling him for screening test, does not arise.

10. Management witness Mr. Dayama admits in cross-examination para. 8 that Ghodke was not given notice while terminating his service, nor followed the provisions of Section 25F of the Industrial Disputes Act, while closing the locoshed and that no retrenchment compensation was paid to him. The Learned Counsel for Management at this juncture submits, Ghodke was not in continuous service as required under section 25B and since there was no work locoshed was closed, question of retrenchment and that giving compensation and issuing notice thereby application of Section 25 F does not arise, therefore Ghodke is not entitled to any relief. As stated above, Ghodke worked about 1151 days less than his co-workers, Suresh and Hariparasad. He so worked with break period, there was no work, therefore, to my view, though Mr. Dayama admits of not following the provisions under section 25 F referred to above, there was no retrenchment, therefore regularising Ghodke, would be back door entry in Government service, which is not permissible under the Act.

11. So far the relief of appointment on Compassionate ground to Shri Ghodke is concerned, his father expired in 1973 while in railway service, 60 years of age. For the first time, he applied in 1987-88 on the above count. His claim is belated. His father died at the age of 60. The Learned Counsel for Management submits that father of Ghodke was a Lever man in traffic department in Class-IV category. His mother had applied for appointment on compassionate ground on 4-4-88. Under the service rules applicable to Class-IV staff, who were continuous in service till they are physically fit even though they have cross their normal date of retirement i.e. 58 years cannot be extended the benefit of compassionate ground. Ghodke's deceased father was 60 years old, was availing the facility of remaining in service till he is physically fit after crossing the normal date of retirement, therefore, Ghodke cannot seek benefit.

In Umesh Kumar Nagpal Vs. State of Haryana & Ors. 1995 I AISLJ(SC) pg. 229. Their Lordships of the Apex Court pointed out "compassionate appointment is not a vested right. The object of granting such employment is to enable the family to tide over the sudden crisis. The object is not to give a member of such family a post much less a post for post held by the deceased. What is further, mere death of an employee in harness does not entitle his family to such source of livelihood. It is only if it is satisfied that but for the provision of employment the family will not be able to meet the crisis that a job is to be offered to the eligible member of the family." The elder brother of Ghodke was admittedly looking after the family who is in railway service. Even after attaining majority he applied for appointment on compassionate ground, in 1988 i.e. after about 14 years, which rules out the very cause for which compassionate benefit be extended. Therefore relying on the decision of Supreme Court as above, and the facts of the case management was justified in turning down the request of Ghodke of appointing him on compassionate ground.

12. It is therefore clear that management Central Railway discontinued/not taken Ghodke on duty on 8-2-87, as loco shed was closed. It is further apparent that no junior co-workers to Ghodke were absorbed/regularised in service. Management was justified in not appointing Ghodke on compassionate ground. Therefore Ghodke is not entitled to any relief. Issues Nos. 1 to 5 are therefore answered accordingly and hence the order :—

ORDER

The action of the management of Central Railway, Bhusawal in discontinuing/not taking Shri Ashok Ghodke on duty from 8-2-87 is justified.

Management is further justified in turning down the request of Ghodke for appointing him on compassionate ground.

S.N. SAUNDANKAR, Presiding Officer.

नई दिल्ली, 5 अप्रैल, 2002

का.आ. 1404.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पांडेयन ग्रामा बैंक, के प्रबन्धन के संबंध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लैबर कोर्ट चेन्नई के पंचाट (संदर्भ संख्या आई.डी. नं.-444/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/04/02 को प्राप्त हुआ था।

[सं. एल-12012/101/96-आई.आर.(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 5th April, 2002

S.O. 1404.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. I.T. No.-444/2001) of the Central Government Industrial Tribunal-cum-Labour Court Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management Pandyan Grama Bank and their workmen, which was received by the Central Government on 04-04-2002.

[No. L-12012/101/96-IR (B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL -CUM-LABOUR COURT, CHENNAI**

Thursday, the 28th March, 2002

Present K KARTHIKEYAN,
Presiding Officer

INDUSTRIAL DISPUTE NO 444/2001

(Tamil Nadu State Industrial Tribunal I D No 78/97)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Sri A Guruviah and the Management of Pandyan Grama Bank, Virudhunagar)

BETWEEN

Sri A Guruviah I Party/Workman

ANDThe Chairman, II Party/Management
Pandyan Grama Bank,
Virudhunagar**APPEARANCES**

For the Workman M/s P VS Giridhar
Devi Shanker &
R Srinivasan,
Advocates

For the Management M/s Row & Reddy,
S Vaidyanathan &
W T Prabakar,
Advocates

The Govt of India, Ministry of Labour, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), have referred the concerned dispute for adjudication vide Order No L-12012/101/96/IR (B-I) dated 8-1-97

2 This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, Chennai where it was taken on file as I D No 78/97. When the matter was pending enquiry in that Tribunal, the Government of India, Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tamil Nadu State Industrial Tribunal, the case has been taken on file as I D No 444/2001 and notices were sent to the counsel on record on either side informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 27-02-2001 with their respective parties and to prosecute this case further. Accordingly the learned counsel on either side along with their respective parties have appeared and prosecuted this case by filing their Claim Statement and Counter Statement respectively.

3 When the matter came up before me for final hearing on 14-02-2002, upon perusing the Claim Statment, Counter Statement, the other material papers on record, the oral and documentary evidence let in on either side, and after hearing the arguments advanced by the learned counsel on either side, this matter having stood over till this date for consideration, this Tribunal has passed the following —

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt for adjudication by this Tribunal is as follows —

‘Whether the action of the management of Pandyan Grama Bank in terminating the employment of Sri A Guruviah is justified? If not, what relief the concerned workman is entitled to?’

4 The averments in the Claim Statement of the I Party/Workman Sri A Guruviah (hereinafter refers to as Petitioner) are briefly as follows —

The Petitioner was appointed as a commission agent in the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) as part of a scheme called Nitham Valar Nithi Scheme, by an order of appointment dated 27-01-84. He was appointed as collection agent on prior approval of the Head Office by signing an agreement with the Respondent/Bank. He had furnished a security deposit of Rs 1000/- He was paid commission on the collection made by him at the rate of 3%. He should remit the entire collection made on the previous day into the bank before the banking hours on the next day. If he fails to do so, he will loose 50% of the commission on the amount collected and in case of default exceeding one day, he will loose the entire commission. The workman is taken to task when any depositor closes the account within a period of six months to twenty four months from the date of opening of the said account. There will be a reduction of the commission payable to the agent in that event. For all acts of commission and omission of the nominee the collection agent will be responsible and answerable to the bank. The Respondent has issued a letter to the Manager dated 2-3-95 not allowing to open new accounts, if the deposit on the head of ‘NVN’ account is less than five lakhs thus, the number of accounts dwindled with consequent decrease in the earning of the deposit collectors. As such, the Respondents have failed to give work to the Petitioner. Hence this action of the Respondent in terminating the service of the Petitioner indirectly without giving reasons is arbitrary and unreasonable. The Petitioner filed a petition before the Assistant Labour Commissioner on conciliation seeking to reinstate the Petitioner with back wages and continuity of service. On failure of conciliation efforts taken by the Assistant Labour Commissioner, he submitted a failure of conciliation report to the Government, which in turn referred this matter as an industrial dispute for adjudication by this Tribunal. The impugned order is arbitrary and unreasonable and violative of the Petitioner's rights under Article 14, 16 and 21 of the Constitution. The Division Bench of High Court Madras, in a batch of appeals has held that there is sufficient control over the work of Tiny Deposit Agents by the bank, that the Tiny Deposit agent is a workman as defined in section 2(2) of the Industrial Disputes Act and that such a Tiny Deposit Agent is not an independent contractor but part of the organisation. Though in the letter of appointment issued by the bank to the Petitioner, commission was fixed payable to the Petitioner at 3% on the total collection made by the Petitioner each month clause 16 of the agreement provided that the commission could be determined by the bank time to time. As per rule of the scheme, opening of the account should be done only after the supervisory official authorises the same, though the collecting agent is permitted to receive deposits from door to door. This is an important

circumstances which shows that the collecting agent is not an independent contractor so as to enrol customers of the bank on his own. The Tiny Deposit Agent is undoubtedly engaged in the business of the bank i.e. the deposit mobilisation. The remuneration of the Tiny Deposit Agent is fixed in the agreement. Though it is called commission, it will still be remuneration as defined by the decisions of the Supreme Court as well as the definition of the wages in the Industrial Disputes Act. The nature of work of the Petitioner demands daily attendance in bank and deposit of the collections made by him on the previous day. The Petitioner has to do some clerical work as he is bound to fill up relevant forms, ledgers, pass books, etc. The Petitioner should furnish a security deposit of Rs. 1000/- which will be placed in fixed deposit for a minimum period of three years. The bank can instruct the agent not to enrol new subscribers at any time. The provision enabling the agent to terminate the agency on giving the bank a month's notice is the circumstances, which goes to show that it is contract of service. The impugned order of the Respondent does not allow the workmen to open a fresh account under 'NVN' scheme and thereby terminated the services of the Petitioner. The action of the Respondent in terminating the service of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice. The action of the Respondent in terminating the service of the Petitioner is violative of Chapter VA and Chapter VB particularly section 25F of the Industrial Disputes Act. No notice has been served prior to the issuance of the said order, nor was retrenchment compensation paid. The Govt. Ministry of Finance issued a directive not to wind up the said scheme. Many of the nationalised banks which were virtually winding up the said scheme restored it. Therefore, it is prayed that this Hon'ble Court may be pleased to set aside the impugned order dated 2-3-95 and direct the Respondent to reinstate the Petitioner in service with back wages, continuity of service and all other attendant benefits.

5. The averments in the Counter Statement filed by the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) are briefly as follows —

The Petitioner was engaged as Nitham Valar Nithi Scheme agent from 27-01-1984. Unlike the regular employees of the bank, he was not paid salary. He was paid only commission depending upon the amount of deposit collected. Unlike the regular bank employees he was not required to attend the bank daily or sign the attendance register. He was not required to attend to any other work in the bank. His work consisted in collecting tiny deposits and deposit them into the bank the next day. He may not be doing collection work not more than twice a week. He is governed by the Agency agreement. Unlike other employees, he was not subject to the disciplinary control of the bank and there are no fixed hours of work. The Nitham Valar Nithi Scheme was in operation in the Respondent/Bank since 1979. During State Level Review Committee meeting convened by NABARD on 10-01-95 at Madras, this matter was discussed and the Respondent was advised to review the cost factor in continuing Nitham Valar Nithi Scheme. Subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme in the bank as discussed at the State Level Review Committee meeting. On that basis, the Board of Directors of the bank made a review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount

outstanding under the scheme is less than Rs. 5,00,000/-. Accordingly, the bank during the Board of Directors' meeting held in February, 1995 decided to discontinue the scheme at the branches, where Nitham Valar Nithi Scheme deposit outstanding was less than Rs. 5 lakhs. When this was implemented, the outstanding under Nitham Valar Nithi Scheme in Koomapatti branch was less than Rs. 5 lakhs. Moreover, the agency agreement entered into between the bank and the Petitioner clearly states that the bank shall also be at liberty to terminate the agency any time without assigning any reason whatsoever. The Respondent/Bank is a public sector bank which continues to incur heavy loss. When the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches. When the scheme is withdrawn naturally the agent engaged purely on temporary and commission basis ceased to be engaged further. This has been done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. This by no stretch of imagination can be considered unreasonable, arbitrary and violative of rights of the Petitioner. NVN rules provide that the depositor may open the account through the collection agent authorised by the bank in this behalf. Thus, it is clear that the Nitham Valar Nithi agent is free to open an Nitham Valar Nithi account on his own. The Nitham Valar Nithi agents were not the employees of the bank as their relationship with the bank was only that of contract for service and not contract of service. Nitham Valar Nithi agents need not comply with the minimum conditions stipulated for recruitment as employees of the bank such as age, qualification etc. They were engaged purely on commission basis. Even though, he attended collection work in a day, but no collection is effected he would not be paid commission for that day. So, the commission cannot be treated as wages. Quite recently, the Andhra Pradesh High Court has held in a case that tiny deposit collectors/Nitham Valar Nithi agents in bank are not workmen. The Nitham Valar Nithi agents come to the branch only when they have to remit the amount they collected towards Nitham Valar Nithi Scheme. He has to fill up only specific forms such as list of accounts in which he had made collection and enter the amount collected in the pass book. Though Nitham Valar Nithi agents were authorised to enter in the pass book, it is not authoritative and it is subject to verification by the bank with the Nitham Valar Nithi ledger. Nitham Valar Nithi agent was not required to attend any other work in the bank. Nitham Valar Nithi agents are not workmen even assuming so they cannot complain about violation of Section 25F and other provisions of the Industrial Disputes Act, 1947 as the action of the bank is valid as per section 2(oo) 2 (bb) of the Industrial Disputes Act, 1947. The Petitioner has signed the agreement wherein stipulation No. 5 of the agency agreement states that the bank shall also be at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence there is no violation of natural justice. There is no provision in agency agreement saying that notice should be issued to Nitham Valar Nithi agents prior to their termination and also there is no provision in the agreement to pay compensation. Hence there is no violation of section 25F of the Industrial Disputes Act, 1947. In any event, he cannot claim reinstatement because there was no post of Nitham Valar Nithi agent. It was only an agency between the Petitioner and the bank and the scheme came to be abolished as far as Koomapatti branch is concerned. That

is why, the Andhra Pradesh High Court has held at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. For all the reasons mentioned it is prayed that this Hon'ble Tribunal may be pleased to pass an award rejecting the claim of the Petitioner with cost.

6 When the matter was taken up finally for enquiry, the learned counsel appearing on either side represented that a joint trial can be held for this case along with the other similar cases, 13 in number. The evidence let in on either side both oral and documentary can be treated as a common evidence in all these 14 cases. As per their request, a joint trial has been conducted and evidence recorded in these cases along with other cases have been treated as common evidence on either side. Out of the fourteen petitioners of these fourteen cases, ten have been examined as WW1 to WW10 and on the side of the management one common witness has been examined as MW1. For the Petitioner/Workmen seven documents have been marked as Ex W1 to W7 and for the management twenty-three documents have been marked as Ex M1 to M23 as common documentary evidence in all these cases. The arguments advanced by the learned counsel on either side was heard.

7 The point for my consideration is—

“Whether the action of the Management of Pandyan Grama Bank in terminating the employment of Sri A. Guruviah is justified? If not, what relief the concerned workman is entitled to?”

Point —

The Petitioner Sri A. Guruviah has been employed by the management Pandyan Grama Bank as an agent for collecting amounts from the depositors towards Nitham Valar Nithi, a deposit Scheme introduced by the Respondent/Bank. For the petitioner had entered into an agreement with the Respondent/Bank. The Petitioner, as an agent for collecting amount as tiny deposits from the depositors under the said scheme, has to deposit the collected amount into bank next day. The Petitioner was engaged as such by the Respondent/Bank on commission basis. It is the admission of the Petitioner that he was paid commission on the collection made by him at the rate of 3%. The xerox copy of the S B passbook of the Petitioner wherein the payment of his commission has been credit. The Petitioner was engaged for the Koomapattu branch of the Respondent/Bank as a collection agent for tiny deposits under Nitham Valar Nithi Scheme. The Respondent/Management had sent a letter dated 2-3-95 to the Managers of certain branches of the Respondent/Bank informing that as per the advice given by NABARD in the meeting held on 10-1-95 at Madras, the Board of management of Respondent/Bank has also resolved to discontinue the Nitham Valar Nithi Scheme in the branches, where the outstanding is less than Rs 5 00 000/- as on 31-1-95 and advice the branch not to open any fresh Nitham Valar Nithi account from 1-4-95 and to continue the existing Nitham Valar Nithi accounts in the maturity/closure of period/accounts. The xerox copy of that letter sent to the Manager of Koomapattu branch of Pandyan Grama Bank is Ex W6. In pursuance of the same, the manager of the said branch of the Respondent/Bank informed the Petitioner's a collecting agent under Nitham Valar Nithi Scheme not to open new

accounts and thereby the petitioner was not given work by the Respondent/Bank. This non-employment of the Petitioner has been mentioned by the Petitioner in his Claim Statement as termination of his service indirectly without giving reasons and it is arbitrary and unreasonable. It is the contention of the Respondent/Management in their Counter Statement that during state level review committee meeting convened by NABARD on 10-1-95 at Madras, the matter was discussed and the management of the Respondent/Bank was advised to review the cost factor in continuing Nitham Valar Nithi Scheme and subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme with the bank as discussed at the State level Review Committee meeting and Board of Directors of the bank made review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs 5 lakhs and accordingly the Board of Directors decided to discontinue the scheme in the branches, where the Nitham Valar Nithi deposits outstanding is less than Rs 5 lakhs. It is further contended in the Counter Statement that the Respondent/Bank is a public sector bank, which continues to incur heavy loss and that when the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches and that when the scheme is withdrawn, naturally the agents engaged purely on temporary and commission basis ceased to be engaged further and that was done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. Hence, it cannot be considered as unreasonable, arbitrary and in violation of the rights of the Petitioner. It is admitted that because of the decision taken by the Board of Directors of the Respondent/Bank Management Nitham Valar Nithi Scheme has been discontinued by the Respondent/Management when found that the Nitham Valar Nithi deposit outstanding was less than Rs 5 lakhs and that scheme is not economically viable in those branches and in pursuance of the stoppage of the scheme, the Petitioners who were engaged as Nitham Valar Nithi deposit collection agents were non-employed by the Respondent/Bank. It is the contention of the Petitioner that it amounts to termination of service and hence the action of the Respondent/Management in terminating the services of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice and also a violation of Section 25F of Industrial Disputes Act. It is further contended that the Division Bench of High Court of Madras has held in a batch of Writ Appeal that the tiny deposit agent is a workman as defined in Section 2(s) of the Industrial Disputes Act and he is not an independent contractor but part of the organisation. The Respondent would contend that Andhra Pradesh High Court in a decision reported in Vol 93 (1998) FJR 144 has held that tiny deposit agents (Nitham Valar Nithi agents) in bank are not workmen and as per the agency agreement the bank shall also at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence there is no violation of natural justice as there is no provision in the agreement to pay compensation and to give notice to the Nitham Valar Nithi agent prior to the termination. There is no violation of section 25F of

Industrial Disputes Act and that Nitham Valar Nithi agents are not workmen and the Petitioner cannot complain about the violation of Section 25F and other provisions of Industrial Disputes Act, 1947, since the action of the bank is valid. The question whether the tiny deposit collector for a bank as Nitham Valar Nithi agent is a workman or not has been decided by the Hon'ble Supreme Court in a case reported as (2001) 3 SCC pg 36 **INDIAN BANK ASSOCIATION VS WORKMEN SYNDICATE BANK**. In that case the Hon'ble Supreme Court has held that *'these deposit collectors are workmen within the meaning of section 2(s) of Industrial Disputes Act 1947 and that as seen from Section 2(rr) of the Industrial Disputes Act, the commission received by the deposit collectors is nothing else but wage which is dependent on the productivity. This commission is paid for promoting the business of the various banks and that there is clearly a relationship of master and servant between the management and the deposit collectors'*. So from this recent decision of the Hon'ble Supreme Court a quietus has been given to the issue whether the tiny deposit collector or Nitham Valar Nithi agent is a workman or not. The learned counsel for the Respondent also has fairly conceded that in view of this decision of the Supreme Court, the Petitioner can be considered as a workman under Industrial Disputes Act.

8. In this industrial dispute the Petitioner has questioned the action of the management of Pandyan Grama Bank in terminating his employment as Nitham Valar Nithi agent as unjustified for the reason that the Respondent/Management has not issued any prior notice of termination, notice pay or compensation which is a violation under section 25F of the Industrial Disputes Act. In the Claim Statement the Petitioner has further asked for the relief that this Hon'ble Court may be pleased to set aside the order dated 2-3-95 and to direct the Respondent to reinstate the Petitioner into service with back wages, continuity of service and all other attendant benefits. In the above cited case, the Supreme Court has held that *'the persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work and that the mode of selection and qualification are not comparable to those of employees even though the employees may be doing similar work'*. In the present case, not only on the mode of selection and qualification not comparable, but even the work is comparable. The work which deposit collectors do is completely different from the work which the regular employees do. There was, thus, no question of absorption and there was also no question of the deposit collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the banks. So, in view of this decision of the Supreme Court the Petitioner cannot claim to be reinstated in service of the Respondent/Bank. Further, in view of the discontinuation of Nitham Valar Nithi Scheme in the branch where it was found to be economically not viable by the Board of Directors of the Respondent/Bank the post of Nitham Valar Nithi collection agents will not be available for the Petitioner to reinstate in service as Nitham Valar Nithi collection agent.

9. The Petitioner has requested this Court to pass an order to set aside the order dated 2-3-95 of the Respondent/Management like the order Ex W6 sent to the Manager of Koomapatti branch. A perusal of this letter by

Chairman to the Manager of Pandyan Grama Bank regarding stoppage of opening of any fresh Nitham Valar Nithi accounts from 1-4-95 in certain branches of the Bank was a decision taken by Board of Directors of the Respondent/Bank after reviewing the position of economic viability in continuing the scheme any further, where the amount outstanding under the scheme is less than Rs 5 lakhs in certain branches. MWI has also spoken to that effect in his evidence. No contra evidence has been let it by the Petitioner to arrive at a conclusion that the decision taken by the Board of Directors, after the discussion at the State level review committee meeting of the bank in respect of the function of Nitham Valar Nithi Scheme in the bank branches is wrong or incorrect. It is not disputed that the Respondent/Bank is a public sector bank and when the Respondent/Bank found this Nitham Valar Nithi Scheme as not economically viable by considering the cost of effectiveness of the scheme, it can take a decision to discontinue the same in the branches where the amount outstanding under the scheme is less than Rs 5 lakhs, this action of the Respondent/Bank Management has been taken only in respect of the bank branches where it was found not economically viable to continue the scheme. So under such circumstances, the decision taken by the Respondent/Management and in pursuance of the same a circular has been issued under Ex W6 cannot said to be an arbitrary decision. The decision taken by the Respondent/Management in the question of setting aside the order dated 2-3-95 like Ex W6 does not at all arise.

10. In view of the earlier discussions on the basis of the decision of the Supreme Court above cited, the Petitioner can be considered as a workman under provisions of the Industrial Disputes Act, so far as his engagement as tiny deposit collection agent under Nitham Valar Nithi Scheme for the bank branch. That being the position, the non-employment of the Petitioner without any prior notice and compensation can be considered as a violation of Section 25F of the Industrial Disputes Act, 1947 as it is contended by the learned counsel for the Petitioner. In the Counter Statement also, it is the contention of the Respondent/Management that as per the Andhra Pradesh High Court decision at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. Under such circumstances, it can be held that the Petitioner as Nitham Valar Nithi agent has been non-employed because of the stoppage of the scheme in the bank branch on the decision taken by the Respondent/Management is entitled to get retrenchment compensation, as it is held by the Hon'ble Supreme Court in a case reported as AIR 1980 SC 1219 **BETWEEN SANTOSH GUPTA AND STATE BANK OF PATIALA**. In that case, the Hon'ble Supreme Court has held that *'Compensation shall be payable to workman in case of closure of undertaking as if, the workman had been retrenched, as it is provided under section 25 (fff) of Industrial Disputes Act 1947. It is further observed by the Hon'ble Supreme Court that the manifest object of these provisions is to so compensate the workman for loss of employment as to provide him the wherewithal to subsist until he finds fresh employment'*. This decision of the Hon'ble Supreme Court is quite applicable to the present facts of this case. Under such circumstances, it can be concluded that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner as Nitham Valar Nithi Collection Agent is justified, but the Petitioner is entitled for retrenchment compensation under section

25F of Industrial Disputes Act, 1947 Thus, the point is answered accordingly

11 In the result, an Award is passed holding that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner Sri A Guruviah as Nitham Valar Nithi Collection Agent is justified. The Respondent/Management is directed to pay the Petitioner/Workman as retrenchment compensation, the amount equivalent to the amount he has earned as his commission for the period of one year immediately preceding to his non-employment. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28th March, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined in common for this case and the connected cases :—

For the I Party/Workman

WW1	Sri T. Nelson
WW2	Sri A. Guruviah
WW3	Sri A. Soundarajan
WW4	Sri A. Senthilvel
WW5	Sri T. Chellan
WW6	Sri M. Abdul Rajak
WW7	Sri S. Jayamalai Perumal
WW8	Sri Subburaj
WW9	Sri A. L. Ramu
WW10	Sri S. Raman

For the II Party/Management MW1 Sri S. Sangilipandi

Documents marked as Exhibits in common for this case and other connected cases :—

For the I Party/Workman —

Ex No	Date	Description
W1	02-03-84	Xerox copy of the appointment letter issued to Sri A. Guruviah
W2	Nil	Xerox copy of the identity card of Mr R. Sankara Narayana Moorthy issued by the Respondent
W3	Nil	Xerox copy of the S B passbook of Sri G. Subburaj
W4	21-06-85	Original agreement between Sri T. Nelson, workman and Respondent/Management
W5	Nil	Xerox copy of the Nitham Valarnidhi Scheme
W6	02-03-95	Xerox copy of the letter of the Chairman to the Manager, Pandyan Grama Bank regarding stoppage of Opening of any fresh non deposit account from 1-4-95 in certain branches
W7	26-06-99	Xerox copy of the circular issued by the Chairman of Bank regarding profits accrued

For the II Party/Management —

Ex No	Date	Description
M1	31-01-95	Xerox copy of the daily collection list
M2	01-02-95	Xerox copy of the sundry creditor cash voucher
M3	01-11-95 to 07-11-95	Xerox copy of the weekly consolidation register
M4	Nil	Xerox copy of the NVM a/c No 356 ledger extract
M5	27-12-91	Xerox copy of the credit transfer voucher NVN A/c
M6	27-12-91	Xerox copy of the debit cash voucher NVN a/c 92
M7	27-12-91	Xerox copy of the NVN discharged receipt voucher
M8	27-12-91	Xerox copy of the requisition letter for closure of NVN account No 92
M9	18-02-91	Xerox copy of the NVN specimen card No 92
M10	18-12-91	Xerox copy of the credit voucher for demand loan
M11	18-12-91	Xerox copy of the debit cash voucher NVN Account
M12	18-12-91	Xerox copy of the NVN discharged receipt
M13	15-12-90	Xerox copy of the NVN Specimen card
M14	03-12-93	Xerox copy of the NVN agent S B A/c No 2149
M15	Nil	Xerox copy of the guidelines for NVN scheme
M16	Nil	Xerox copy of the rules regarding NVN Scheme
M17	Nil	Xerox copy of the model of NVN agency agreement
M18	Nil	Xerox copy of the letter of the Chairman to all Branches to discontinue NVN deposits with list of branches
M19	27-04-93	Xerox copy of the NVN cash receipt
M20	Nil	Xerox copy of the NVN A/c No 607 and 615 ledger copy
M21	Nil	Xerox copy of the ledger copy of Mr Nelson's S B Account No 40
M22	22-02-95 to 02-03-95	Xerox copy of the weekly consolidation register
M23	Nil	Extract of S B account pertaining to Mr T. Nelson

नई दिल्ली, 5 अप्रैल, 2002

का.आ. 1405.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) व. धारा 17 के अनुसरण में केन्द्रीय, सरकार पांडेयन ग्रामा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लैबर कोर्ट चेन्नई के पंचाट (संदर्भ संख्या आई.डी.नं. 443/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04/04/2002 को प्राप्त हुआ था।

[सं. एल-12012/102/96-आईआर. (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 5th April, 2002

S.O. 1405.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. I. D. No. 443/2001) of the Central Government Industrial Tribunal cum Labour Court Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Pandyan Grama Bank and their workman, which was received by the Central Government on 04-04-2002.

[No. L-12012/102/96-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 28th March, 2002

PRESENT : K. KARTHIKEYAN, Presiding Officer

INDUSTRIAL DISPUTE NO. 443/2001

(Tamil Nadu State Industrial Tribunal I.D.No. 77/94)

(In the matter of the dispute for adjudication under clause (d) Sub-section (1) and Sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947, (14 of 1947), between the Workman Sri A. Soundararajan and the Management of Pandyan Grama Bank, Virudhunagar.)

BETWEEN

Sri A. Soundararajan : I Party/Workman

AND

The Chairman, : II Party/Management
Pandyan Grama Bank, Virudhunagar.

Appearance :

For the Workman : M/s. P.V.S. Giridhar
Devi Shanker &
R.Srinivasan,
Advocates

For the Management : M/s. Row & Reddy,
S.Vaidhyananthan &
W.T.Prabakar,
Advocates

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of Sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act,

1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No. L-12012/102/96/IR (B-I) dated 08-01-97.

2. This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, Chennai where it was taken on file as I.D. No. 77/97. When the matter was pending enquiry in that Tribunal, the Government of India, Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tamil Nadu State Industrial Tribunal, the case has been taken on file as I.D. No. 443/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 27-02-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case by filing their Claim Statement and Counter Statement respectively.

3. When the matter came up before me for final hearing on 14-03-2002, upon perusing the Claim Statement, Counter Statement, the other material papers on record, the oral and documentary evidence let in on either side, and after hearing the arguments advanced by the learned counsel on either side, this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows :—

“Whether the action of the Management of Pandyan Grama Bank in terminating the employment of Sri A. Soundararajan is justified? If not, to what relief the concerned workman is entitled to?”

4. The averments in the Claim Statement of the I Party/Workman Sri A. Soundararajan (hereinafter refers to as Petitioner) are briefly as follows :—

The Petitioner was appointed as a commission agent in the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) as part of a scheme called Nitham Valar Nithi Scheme, by an order of appointment dated 14-8-1984. He was appointed as collection agent on prior approval of the Head Office by signing an agreement with the Respondent/Bank. He had furnished a security deposit of Rs. 1000/-. He was paid commission on the collection made by him at the rate of 3%. He should remit the entire collection made on the previous day into the bank before the banking hours on the next day. If he fails to do so, he will lose 50% of the commission on the amount collected and in case of default exceeding one day, he will lose the entire commission. The workman is taken to task, when any depositor close the account within a period of six months to twenty four months from the date of opening of the said account. There will be a reduction of the commission payable to the agent in that event. For all acts of commission and omission of nominee, the collection agent will be responsible and answerable to the bank. The Respondent has issued a letter to the Manager dated 2-3-95 not allowing to open new accounts, if the deposit on the head of ‘NVN’ account is less than five lakhs. Thus, the number of accounts dwindled with

consequent decrease in the earning of the deposit collectors. As such, the Respondents have failed to give work to the Petitioner. Hence, this action of the Respondent in terminating the service of the Petitioner indirectly without giving reasons is arbitrary and unreasonable. The Petitioner filed a petition before the Assistant Labour Commissioner on conciliation seeking to reinstate the Petitioner with back wages and continuity of service. On failure of conciliation efforts taken by the Assistant Labour Commissioner, he submitted a failure of conciliation report to the Government, which in turn referred this matter as an industrial dispute for adjudication by this Tribunal. The impugned order is arbitrary and unreasonable and violative of the Petitioner's rights under Article 14, 16 and 21 of the Constitution. The Division Bench of High Court Madras, in a batch of appeals has held that there is sufficient control over the work of Tiny Deposit Agents by the bank, that the Tiny Deposit Agent is a workman as defined in section 2(2) of the Industrial Disputes Act and that such a Tiny Deposit Agent is not an independent contractor but part of the organisation. Though in the letter of appointment issued by the bank to the Petitioner, commission was fixed payable to the Petitioner at 3% on the total collection made by the Petitioner each month, clause 16 of the agreement provided that the commission could be determined by the bank time to time. As per rule of the scheme, opening of the account should be done only after the supervisory official authorises the same, though the collecting agent is permitted to receive deposits from door to door. This is an important circumstance which shows that the collecting agent is not an independent contractor so as to enrol customers of the bank on his own. The Tiny Deposit Agent is undoubtedly engaged in the business of the bank i.e. the deposit mobilisation. The remuneration of the Tiny Deposit Agent is fixed in the agreement. Though it is called commission, it will still be remuneration as defined by the decisions of the Supreme Court as well as the definition of the wages in the Industrial Disputes Act. The nature of work of the Petitioner demands daily attendance in bank and deposit of the collections made by him on the previous day. The Petitioner has to do some clerical work as he is bound to fill up relevant forms, ledgers, pass books etc. The Petitioner should furnish a security deposit of Rs. 1000/- which will be placed in fixed deposit for a minimum period of three years. The bank can instruct the agent not to enrol new subscribers at any time. The provision enabling the agent to terminate the agency on giving the bank a month's notice is the circumstances, which goes to show that it is a contract of service. The impugned order of the Respondent does not allow the workmen to open a fresh account under 'NVN' scheme and thereby terminated the services of the Petitioner. The action of the Respondent in terminating the service of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice. The action of the Respondent in terminating the service of the Petitioner is violative of Chapter VA and Chapter VB particularly section 25F of the Industrial Disputes Act. No notice has been served prior to the issuance of the said order nor was retrenchment compensation paid. The Govt. Ministry of Finance issued a direction not to wind up the said scheme. Many of the nationalised banks which were virtually winding up the said scheme restored it. Therefore, it is prayed that this Hon'ble Court may be

pleased to set aside the impugned order dated 2-3-95 and direct the Respondent to reinstate the Petitioner in service with back wages, continuity of service and all other attendant benefits.

5. The averments in the Counter Statement filed by the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) are briefly as follows —

The Petitioner was engaged as Nitham Valar Nithi Scheme agent from 1984. Unlike the regular employees of the bank, he was not paid salary. He was paid only commission depending upon the amount of deposit collected. Unlike the regular bank employees he was not required to attend the bank daily or sign the attendance register. He was not required to attend to any other work in the bank. His work consisted in collecting tiny deposits and deposit them into the bank the next day. He may not be doing collection work not more than twice a week. He is governed by the Agency agreement. Unlike other employees, he was not subject to the disciplinary control of the bank and there are no fixed hours of work. The Nitham Valar Nithi Scheme was in operation in the Respondent/bank since 1979. During State Level Review Committee meeting convened by NABARD on 10-01-95 at Madras, this matter was discussed and the Respondent was advised to review the cost factor in continuing Nitham Valar Nithi Scheme. Subsequently NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme in the bank as discussed at the State Level Review Committee meeting. On that basis the Board of Directors of the bank made a review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs. 5,00,000/-. Accordingly, the bank during the Board of Directors' meeting held in February 1995 decided to discontinue the scheme at the branches where Nitham Valar Nithi Scheme deposit outstanding was less than Rs. 5 lakhs. When this was implemented the outstanding under Nitham Valar Nithi Scheme in Tiruvengadam branch was less than Rs. 5 lakhs. Moreover the agency agreement entered into between the bank and the Petitioner clearly states that the bank shall also be at liberty to terminate the agency any time without assigning any reason whatsoever. The Respondent/Bank is a public sector bank which continues to incur heavy loss. When the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches. When the scheme is withdrawn naturally the agent engaged purely on temporary and commission basis ceased to be engaged further. This has been done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. This by no stretch of imagination can be considered unreasonable, arbitrary and violative of rights of the Petitioner. NVN rules provide that the depositor may open the account through the collection agent authorised by the bank in this behalf. Thus it is clear that the Nitham Valar Nithi agent is free to open an Nitham Valar Nithi account on his own. The Nitham Valar Nithi agents were not the employees of the bank as their relationship with the bank was only that of contract for service and not contract of service. Nitham Valar Nithi agents need not comply with the minimum conditions stipulated for recruitment as

employees of the bank such as age, qualification etc. They were engaged purely on commission basis. Even though, he attended collection work in a day, but no collection is effected he would not be paid commission for that day. So, the commission cannot be treated as wages. Quite recently, the Andhra Pradesh High Court has held in a case that tiny deposit collectors/Nitham Valar Nithi agents in bank are not workmen. The Nitham Valar Nithi agents come to the branch only when they have to remit the amount they collected towards Nitham Valar Nithi Scheme. He has to fill up only specific forms such as list of accounts in which he had made collection and enter the amount collected in the pass book. Though Nitham Valar Nithi agents were authorised to enter in the pass book, it is not authoritative and it is subject to verification by the bank with the Nitham Valar Nithi ledger. Nitham Valar Nithi agent was not required to attend any other work in the bank. Nitham Valar Nithi agents are not workmen, even assuming so they cannot complain about violation of Section 25F and other provisions of the Industrial Disputes Act, 1947 as the action of the bank is valid as per section 2(o) 2(bb) of the Industrial Disputes Act, 1947. The Petitioner has signed the agreement wherein stipulation No. 5 of the agency agreement states that the bank shall also be at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice. There is no provision in agency agreement saying that notice should be issued to Nitham Valar Nithi agents prior to their termination and also there is no provision in the agreement to pay compensation. Hence, there is no violation of section 25F of the Industrial Disputes Act, 1947. In any event, he cannot claim reinstatement because there was no post of Nitham Valar Nithi agent. It was only an agency between the Petitioner and the bank and the scheme came to be abolished as far as Tiruvengadam branch is concerned. That is why, the Andhra Pradesh High Court has held at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. For all the reasons mentioned it is prayed that this Hon'ble Tribunal may be pleased to pass an award rejecting the claim of the Petitioner with cost.

6. When the matter was taken up finally for enquiry, the learned counsel appearing on either side represented that a joint trial can be held for this case along with the other similar cases, 13 in number. The evidence let in on either side both oral and documentary can be treated as a common evidence in all these 14 cases. As per their request, a joint trial has been conducted and evidence recorded in these cases along with other cases have been treated as common evidence on either side. Out of the fourteen petitioners of these fourteen cases, ten have been examined as WW1 to WW10 and on the side of the management one common witness has been examined as MW1. For the Petitioner/Workmen seven documents have been marked as Ex. W1 to W7 and for the management twenty three documents have been marked as Ex. M1 to M23 as common documentary evidence in all these cases. The arguments advanced by the learned counsel on either side was heard.

7. The point for my consideration is—

“Whether the action of the Management of Pandyan Grama Bank in terminating the employment of Sri A. Soundararajan is justified? If not, what relief the concerned workman is entitled to?”

Point :—

The Petitioner Sri A. Soundararajan has been employed by the management Pandyan Grama Bank as an agent for collecting amounts from the depositors towards Nitham Valar Nithi, a deposit Scheme introduced by the Respondent/Bank. For that the petitioner had entered into an agreement with the Respondent/Bank. The Petitioner, as an agent for collecting amount as tiny deposits from the depositors under the said scheme, has to deposit the collected amount into the bank next day. The Petitioner was engaged as such by the Respondent/Bank on commission basis. It is the admission of the Petitioner that he was paid commission on the collection made by him at the rate of 3%. The xerox copy of the S.B. pass book of the Petitioner wherein the payment of his commission has been credit. The Petitioner was engaged for the Tiruvengadam branch of the Respondent/Bank as a collection agent for tiny deposits under Nitham Valar Nithi Scheme. The Respondent/Management had sent a letter dated 2-3-95 to the Managers' of certain branch of the Respondent/Bank informing that as per the advice given by NABARD in the meeting held on 10.1.95 at Madras, the Board of management of Respondent/Bank has also resolved to discontinue the Nitham Valar Nithi Scheme in the branches, where the outstanding is less than 5,00,000/- as on 31-1-95 and advice the branch not to open any fresh Nitham Valar Nithi account from 1-4-95 and to continue the existing Nitham Valar Nithi accounts in the maturity/closure of period/accounts. The xerox copy of that letter sent to the Manager of Koompatti branch, of Pandyan Grama Bank is Ex. W6 as it is sent to Tiruvengadam branch. In pursuance of the same, the manager of the said branch of the Respondent/Bank, informed the Petitioner's a collecting agent under Nitham Valar Nithi Scheme not to open new accounts and thereby the petitioner was not given work by the Respondent/Bank. This non-employment of the Petitioner has been maintained by the Petitioner in his Claim Statement as termination of his service indirectly without giving reasons and it is arbitrary and unreasonable. It is the contention of the Respondent/Management in their Counter Statement that during state level review committee meeting convened by NABARD on 10-1-95 at Madras, the matter was discussed and the management of the Respondent/Bank was advised to review the cost factor in continuing Nitham Valar Nithi Scheme and subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme with the bank as discussed at the State level Review Committee meeting and Board of Directors of the bank made review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs. 5 lakhs and accordingly, the Board of Directors decided to discontinue the scheme in the branches, where the Nitham Valar Nithi deposits outstanding is less than Rs. 5 lakhs. It is further contended in the Counter Statement that the Respondent/Bank is a public sector bank, which continues to incur heavy loss and that when the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches and that when the scheme is withdrawn, naturally the agents engaged purely on temporary and commission basis ceased to be engaged further and that was done strictly

in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. Hence, it cannot be considered as unreasonable, arbitrary, and in violation of the rights of the Petitioner. It is admitted that because of the decision taken by the Board of Directors of the Respondent/Bank Management Nitham Valar Nithi Scheme has been discontinued by the Respondent/Management when found that the Nitham Valar Nithi deposit outstanding was less than Rs. 5 lakhs and that scheme is not economically viable in those branches and in pursuance of the stoppage of the scheme, the Petitioners who were engaged as Nitham Valar Nithi deposit collection agents were non-employed by the Respondent/Bank. It is the contention of the Petitioner that it amounts to termination of service and hence the action of the Respondent/Management in terminating the services of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice and also a violation of Section 25F of Industrial Disputes Act. It is further contended that the Division Bench of High Court of Madras has held in a batch of Writ Appeal that *the tiny deposit agent is a workman as defined in Section 2(s) of the Industrial Disputes Act and he is not an independent contractor but part of the organisation*. The Respondent would contend that Andhra Pradesh High Court in a decision reported in Vol 93 (1998) FJR 144 has held that tiny deposit agents (Nitham Valar Nithi agents) in bank are not workmen and as per the agency agreement, the bank shall also at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence there is no violation of natural justice as there is no provision in the agreement to pay compensation and to give notice to the Nitham Valar Nithi agent prior to the termination. There is no violation of Section 25F of Industrial Disputes Act and that Nitham Valar Nithi agents are not workmen and the Petitioner cannot complain about the violation of Section 25F and other provisions of Industrial Disputes Act, 1947 since the action of the bank is valid. The question whether the tiny deposit collector for a bank as Nitham Valar Nithi agent is a workman or not has been decided by the Hon'ble Supreme Court in a case reported as (2001) 3 SCC p. 36 INDIAN BANK ASSOCIATION VS WORKMEN SYNDICATE BANK. In that case the Hon'ble Supreme Court has held that *these deposit collectors are workmen within the meaning of section 2(s) of Industrial Disputes Act, 1947 and that as seen from Section 2(rr) of the Industrial Disputes Act, the commission received by the deposit collectors is nothing else but wage which is dependent on the productivity. This commission is paid for promoting the business of the various banks and that there is clearly a relationship of master and servant between the management and the deposit collectors*. So from this recent decision of the Hon'ble Supreme Court a quietus has been given to the issue whether the tiny deposit collector or Nitham Valar Nithi agent is a workman or not. The learned counsel for the Respondent also has fairly conceded that in view of this decision of the Supreme Court, the Petitioner can be considered as a workman under Industrial Disputes Act.

8. In this industrial dispute the Petitioner has questioned the action of the management of Pandyan Grama Bank in terminating his employment as Nitham Valar Nithi agent as unjustified for the reason that the Respondent/

Management has not issued any prior notice of termination, notice pay or compensation which is a violation under Section 25F of the Industrial Disputes Act. In the Claim Statement the Petitioner has further asked for the relief that this Hon'ble Court may be pleased to set aside the order dated 2-3-95 and to direct the Respondent to reinstate the Petitioner into service with back wages, continuity of service and all other attendant benefits. In the above cited case the Supreme Court has held that *"the persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work and that the mode of selection and qualification are not comparable to those of employees even though the employees may be doing similar work"*. In the present case, not only on the mode of selection and qualification not comparable, but even the work is comparable. The work which deposit collectors do is completely different from the work which the regular employees do. There was, thus, no question of absorption and there was also no question of the deposit collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the banks. So in view of this decision of the Supreme Court, the Petitioner cannot claim to be reinstated in service of the Respondent/Bank. Further, in view of the discontinuation of Nitham Valar Nithi Scheme in the branch where it was found to be economically not viable by the Board of Directors of the Respondent/Bank, the post of Nitham Valar Nithi collection agents will not be available for the Petitioner to reinstate in service as Nitham Valar Nithi collection agent.

9. The Petitioner has requested this Court to pass an order to set aside the order dated 2-3-95 of the Respondent/Management like the order Ex. W6 sent to the Manager of Tiruvengadam branch. A perusal of this letter by Chairman to the Manager of Pandyan Grama Bank regarding stoppage of opening of any fresh Nitham Valar Nithi accounts from 1-4-95 in certain branches of the Bank was a decision taken by Board of Directors of the Respondent/Bank after reviewing the position of economic viability in continuing the scheme any further, where the amount outstanding under the scheme is less than Rs. 5 lakhs in certain branches. MWI has also spoken to that effect in his evidence. No contra evidence has been let it by the Petitioner to arrive at a conclusion that the decision taken by the Board of Directors, after the discussion at the State level review committee meeting of the bank in respect of the function of Nitham Valar Nithi Scheme in the bank branches is wrong or incorrect. It is not disputed that the Respondent/Bank is a public sector bank and when the Respondent/Bank found this Nitham Valar Nithi Scheme as not economically viable by considering the cost of effectiveness of the scheme, it can take a decision to discontinue the same in the branches where the amount outstanding under the scheme is less than Rs. 5 lakhs, this action of the Respondent/Bank Management has been taken only in respect of the bank branches where it was found not economically viable to continue the scheme. So under such circumstances, the decision taken by the Respondent/Management and in pursuance of the same a circular has been issued under Ex. W6 cannot be said to be an incorrect and unjustifiable decision taken by the Respondent/Management. So, the question of setting aside the order dated 2-3-95 like Ex. W6 does not at all arise.

10. In view of the earlier discussions on the basis of the decision of the Supreme Court above cited, the

Petitioner can be considered as a workman under provisions of the Industrial Disputes Act, so far as his engagement as tiny deposit collection agent under Nitham Valar Nithu Scheme for the bank branch. That being the position, the non-employment of the Petitioner without any prior notice and compensation can be considered as a violation of Section 25F of the Industrial Disputes Act, 1947 as it is contended by the learned counsel for the Petitioner. In the Counter Statement also, it is the contention of the Respondent/Management that as per the Andhra Pradesh High Court decision at the worst all Nitham Valar Nithu agents can be awarded compensation and not reinstatement. Under such circumstances, it can be held that the Petitioner as Nitham Valar Nithu agent has been non-employed because of the stoppage of the scheme in the bank branch on the decision taken by the Respondent/Management is entitled to get retrenchment compensation, as it is held by the Hon'ble Supreme Court in a case reported as AIR 1980 SC 1219 BETWEEN SANTOSH GUPTA AND STATE BANK OF PATIALA. In that case, the Hon'ble Supreme Court has held that 'Compensation shall be payable to workman, in case of closure of undertaking as if, the workman had been retrenched, as it is provided under section 25 (ff) of Industrial Disputes Act, 1947. It is further observed by the Hon'ble Supreme Court that the manifest object of these provisions is to so compensate the workman for loss of employment as to provide him the where with all to subsist until he finds fresh employment.' This decision of the Hon'ble Supreme Court is quite applicable to the present facts of this case. Under such circumstances, it can be concluded that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner as Nitham Valar Nithu Collection Agent is justified, but the Petitioner is entitled for retrenchment compensation under section 25F of Industrial Disputes Act, 1947. Thus, the point is answered accordingly.

11 In the result, an Award is passed holding that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner Sri A. Soundararajan as Nitham Valar Nithu Collection Agent is justified. The Respondent/Management is directed to pay the Petitioner/Workman as retrenchment compensation, the amount equivalent to the amount he has earned as his commission for the period of one year immediately preceding to his non-employment. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28th March, 2002.)

K. KARTHIKEYAN Presiding Officer

Witnesses Examined in common for this case and the connected cases :—

For the I Party/Workman WW1 Sri T. Nelson
WW2 Sri A. Guruviah
WW3 Sri A. Soundarajan
WW4 Sri A. Senthilvel
WW5 Sri T. Chellan
WW6 Sri M. Abdul Rajak
WW7 Sri S. Jayamalai Perumal
WW8 Sri Subburaj
WW9 Sri A. L. Ramu
WW10 Sri S. Raman

For the II Party/Management MW1 Sri S. Sangilipandi

Documents marked as Exhibits in common for this case and other connected cases :—

For the I Party/Workman —

Ex No	Date	Description
W1	02-03-84	Xerox copy of the appointment letter issued to Sri A. Guruviah
W2	Nil	Xerox copy of the identity card of Mr R. Sankara Narayana Moorthy issued by the Respondent
W3	Nil	Xerox copy of the S.B. passbook of Sri G. Subhuraraj
W4	21-06-85	Original agreement between Sri T. Nelson workman and Respondent/Management
W5	Nil	Xerox copy of the Nitham Valar Nithu Scheme
W6	02-03-95	Xerox copy of the letter of the Chairman to the Manager, Pandyan Grama Bank regarding stoppage of Opening of any fresh non deposit account from 1-4-95. In certain branches
W7	26-06-99	Xerox copy of the circular issued by the Chairman of Bank regarding profits accrued

For the II Party/Management —

Ex No	Date	Description
M1	31-01-95	Xerox copy of the daily collection list
M2	01-02-95	Xerox copy of the sundry creditor cash voucher
M3	01-11-95 to 07-11-95	Xerox copy of the weekly Consolidation register
M4	Nil	Xerox copy of the NVM a/c No. 356 ledger extract
M5	27-12-91	Xerox copy of the credit transfer voucher NVN A/c
M6	27-12-91	Xerox copy of the debit cash voucher NVN a/c 92
M7	27-12-91	Xerox copy of the NVN discharged receipt voucher
M8	27-12-91	Xerox copy of the requisition letter for closure of NVN account No. 92
M9	18-02-91	Xerox copy of the NVN specimen card No. 92
M10	18-12-91	Xerox copy of the credit voucher for demand loan
M11	18-12-91	Xerox copy of the debit cash voucher NVN account
M12	18-12-91	Xerox copy of the NVN discharged receipt
M13	15-12-90	Xerox copy of the NVN Specimen card
M14	03-12-93	Xerox copy of the NVN agent S.B. A/c No. 2149

M15	Nil	Xerox copy of the guidelines for NVN scheme	BETWEEN
M16	Nil	Xerox copy of the rules regarding NVN Scheme	Sri G Subburaj
M17	Nil	Xerox copy of the model of NVN agency agreement	I Party/Workman
M18	Nil	Xerox copy of the letter of the Chairman to all Branches to discontinue NVN deposits with list of branches	AND
M19	27-04-93	Xerox copy of the NVN cash receipt	The Chairman.
M20	Nil	Xerox copy of the NVN A/c No 607 and 615 ledger copy	Pandyan Grama Bank.
M21	Nil	Xerox copy of the ledger copy of Mr Nelson s S B Account No 40	Virudhunagar
M22	22-02-95 to 02-03-95	Xerox copy of the weekly Consolidation register	APPEARANCE
M23	Nil	Extract of S B account pertaining to Mr T Nelson	For the Workman
			M/s PVS Gridhar Dev Shanker & R Srinivasan Advocates
			For the Management
			M/s Row & Reddy. S Vaidhyanathan & WT Prabakar. Advocates

नई दिल्ली, 5 अप्रैल, 2002

का.आ. 1406.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 क अनुसरण में केन्द्रीय, सरकार पांडेयन ग्राम बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/लेबर कोर्ट चेन्नई के पंचाट (संदर्भ संख्या आई.डी.नं. 441/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-04-2002 को प्राप्त हुआ था।

[सं एल-12012/104/96-आईआर (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 5th April, 2002

S.O. 1406.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947) the Central Government hereby publishes the award (Ref No ID No 441/2001) of the Central Government Industrial Tribunal cum Labour Court Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Pandyan Grama Bank and their workman, which was received by the Central Government on 04-04-2002

[No L-12012/104/96-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 28th March, 2002

Present K KARTHIKEYAN.

Presiding Officer

INDUSTRIAL DISPUTE NO 441/2001

(Tamil Nadu State Industrial Tribunal I D No 75/97)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act 1947 (14 of 1947) between the Workman Sri G Subburaj and the Management of Pandyan Grama Bank Virudhunagar)

The Govt of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No L-12012/104/96/IR (B-I) dated 6-8-97

2 This reference has been made earlier to the Tamil Nadu State Industrial Tribunal Chennai where it was taken on file as I D No 75/97 When the matter was pending enquiry in that Tribunal, the Government of India, Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication On receipt of records from that Tamil Nadu State Industrial Tribunal, the case has been taken on file as I D No 441/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal with a direction to appear before this Tribunal on 27-02-2001 with their respective parties and to prosecute this case further Accordingly the learned counsel on either side along with their respective parties have appeared and prosecuted this case by filing their Claim Statement and Counter Statement respectively

3 When the matter came up before me for final hearing on 14-02-2002, upon perusing the Claim Statement, Counter Statement, the other material papers on record, the oral and documentary evidence let in on either side, and after hearing the arguments advanced by the learned counsel on either side, this matter having stood over till this date for consideration, this Tribunal has passed the following —

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt for adjudication by this Tribunal is as follows —

“Whether the action of the Management of Pandyan Grama Bank in terminating the services of Sri G Subburaj is justified ? If not what relief the workman is entitled to ?

4 The averments in the Claim Statement of the I Party/Workman Sri G Subburaj (hereinafter refers to as Petitioner) are briefly as follows —

The Petitioner was appointed as a commission agent in the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) as part of a scheme called Nitham Valar Nithi Scheme, by an order of appointment dated 27-1-1984. He was appointed as collection agent on prior approval of the Head Office by signing an agreement with the Respondent/Bank. He had furnished a security deposit of Rs 1000. He was paid commission on the collection made by him at the rate of 3%. He should remit the entire collection made on the previous day into the bank before the banking hours on the next day. If he fails to do so, he will lose 50% of the commission on the amount collected and in case of default exceeding one day, he will lose the entire commission. The workman is taken to task, when any depositor close the account within a period of six months to twenty four months from the date of opening of the said account. There will be a reduction of the commission payable to the agent in that event. For all acts of commission and omission of the nominee, the collection agent will be responsible and answerable to the bank. The Respondent has issued a letter to the Manager dated 2-3-95 not allowing to open new accounts if the deposit on the head of 'NVN' account is less than five lakhs. Thus, the number of accounts dwindled with consequent decrease in the earning of the deposit collectors. As such, the Respondents have failed to give work to the Petitioner. Hence, this action of the Respondent in terminating the service of the Petitioner indirectly without giving reasons is arbitrary and unreasonable. The Petitioner filed a petition before the Assistant Labour Commissioner on conciliation seeking to reinstate the Petitioner with back wages and continuity of service. On failure of conciliation efforts taken by the Assistant Labour Commissioner, he submitted a failure of conciliation report to the Government which in turn referred this matter as an industrial dispute for adjudication by this Tribunal. The impugned order is arbitrary and unreasonable and violative of the Petitioner's rights under Articles 14, 16 and 21 of the Constitution. The Division Bench of High Court Madras, in a batch of appeals has held that there is sufficient control over the work of Tiny Deposit Agents by the bank, that the Tiny Deposit Agent is a workman as defined in section 2(2) of the Industrial Disputes Act and that such a Tiny Deposit Agent is not an independent contractor but part of the organisation. Though in the letter of appointment issued by the bank to the Petitioner, commission was fixed payable to the Petitioner at 3% on the total collection made by the Petitioner each month, clause 16 of the agreement provided that the commission could be determined by the bank time to time. As per rule of the scheme, opening of the account should be done only after the supervisory official authorises the same, though the collecting agent is permitted to receive deposits from door to door. This is an important circumstance which shows that the collecting agent is not an independent contractor so as to enrol customers of the bank on his own. The Tiny Deposit Agent is undoubtedly engaged in the business of the bank i.e. the deposit mobilisation. The remuneration of the Tiny Deposit Agent is fixed in the agreement. Though it is called commission, it will still be remuneration as defined by the decisions of the Supreme Court as well as the definition of the wages in the Industrial Disputes Act. The nature of work of the Petitioner demands daily attendance in bank and deposit of the collections made by him on the previous day. The

Petitioner has to do some clerical work as he is bound to fill up relevant forms, ledgers, pass books, etc. The Petitioner should furnish a security deposit of Rs 1000 which will be placed in fixed deposit for a minimum period of three years. The bank can instruct the agent not to enrol new subscribers at any time. The provision enabling the agent to terminate the agency on giving the bank a month's notice is the circumstances, which goes to show that it is a contract of service. The impugned order of the Respondent does not allow the workmen to open a fresh account under 'NVN' scheme and thereby terminated the services of the Petitioner. The action of the Respondent in terminating the service of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice. The action of the Respondent in terminating the service of the Petitioner is violative of Chapter VA and Chapter VB particularly section 25F of the Industrial Disputes Act. No notice has been served prior to the issuance of the said order, nor was retrenchment compensation paid. The Govt. Ministry of Finance issued a directive not to wind up the said scheme. Many of the nationalised banks which were virtually winding up the said scheme restored it. Therefore, it is prayed that this Hon'ble Court may be pleased to set aside the impugned order dated 2-3-95 and direct the Respondent to reinstate the Petitioner in service with back wages, continuity of service and all other attendant benefits.

5. The averments in the Counter Statement filed by the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) are briefly as follows —

The Petitioner was engaged as Nitham Valar Nithi Scheme agent from 27-1-1985. Unlike the regular employees of the bank, he was not paid salary. He was paid only commission depending upon the amount of deposit collected. Unlike the regular bank employees he was not required to attend the bank daily or sign the attendance register. He was not required to attend to any other work in the bank. His work consisted in collecting tiny deposits and deposit them into the bank the next day. He may not be doing collection work not more than twice a week. He is governed by the Agency agreement. Unlike other employees, he was not subject to the disciplinary control of the bank and there are no fixed hours of work. The Nitham Valar Nithi Scheme was in operation in the Respondent/bank since 1979. During State Level Review Committee meeting convened by NABARD on 10-01-95 at Madras, this matter was discussed and the Respondent was advised to review the cost factor in continuing Nitham Valar Nithi Scheme. Subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme in the bank as discussed at the State Level Review Committee meeting. On that basis, the Board of Directors of the bank made a review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs 500,000. Accordingly, the bank during the Board of Directors' meeting held in February, 1995 decided to discontinue the scheme at the branches, where Nitham Valar Nithi Scheme deposit outstanding was less than Rs 5 lakhs. When this was implemented, the outstanding under Nitham Valar Nithi Scheme in Vilampattu branch was less than Rs 5 lakhs.

Moreover the agency agreement entered into between the bank and the Petitioner clearly states that the bank shall also be at liberty to terminate the agency any time without assigning any reason whatsoever. The Respondent/Bank is a public sector bank which continues to incur heavy loss. When the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches. When the scheme is withdrawn naturally the agent engaged purely on temporary and commission basis ceased to be engaged further. This has been done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. This by no stretch of imagination can be considered unreasonable, arbitrary and violative of rights of the Petitioner. NVN rules provide that the depositor may open the account through the collection agent authorised by the bank in this behalf. Thus, it is clear that the Nitham Valar Nithi agent is free to open an Nitham Valar Nithi account on his own. The Nitham Valar Nithi agents were not the employees of the bank as their relationship with the bank was only that of contract for service and not contract of service. Nitham Valar Nithi agents need not comply with the minimum conditions stipulated for recruitment as employees of the bank such as age, qualification etc. They were engaged purely on commission basis. Even though, he attended collection work in a day but no collection is effected he would not be paid commission for that day. So the commission cannot be treated as wages. Quite recently, the Andhra Pradesh High Court has held in a case that tiny deposit collectors/Nitham Valar Nithi agents in bank are not workmen. The Nitham Valar Nithi agents come to the branch only when they have to remit the amount they collected towards Nitham Valar Nithi Scheme. He has to fill up only specific forms such as list of accounts in which he had made collection and enter the amount collected in the pass book. Though Nitham Valar Nithi agents were authorised to enter in the passbook, it is not authoritative and it is subject to verification by the bank with the Nitham Valar Nithi ledger. Nitham Valar Nithi agent was not required to attend any other work in the bank. Nitham Valar Nithi agents are not workmen, even assuming so they cannot complain about violation of Section 25F and other provisions of the Industrial Disputes Act, 1947 as the action of the bank is valid as per section 2(oo) 2(bb) of the Industrial Disputes Act, 1947. The Petitioner has signed the agreement wherein stipulation No. 5 of the agency agreement states that the bank shall also be at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice. There is no provision in agency agreement saying that notice should be issued to Nitham Valar Nithi agents prior to their termination and also there is no provision in the agreement to pay compensation. Hence there is no violation of section 25F of the Industrial Disputes Act, 1947. In any event, he cannot claim reinstatement because there was no post of Nitham Valar Nithi agent. It was only an agency between the Petitioner and the bank and the scheme came to be abolished as far as Vilampatti branch is concerned. That is why the Andhra Pradesh High Court has held at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. For all the reasons mentioned it is prayed that this Hon'ble

Tribunal may be pleased to pass an award rejecting the claim of the Petitioner with cost.

6. When the matter was taken up finally for enquiry, the learned counsel appearing on either side represented that a joint trial can be held for this case along with the other similar cases, 13 in number. The evidence let in on either side both oral and documentary can be treated as a common evidence in all these 14 cases. As per their request, a joint trial has been conducted and evidence recorded in these cases along with other cases have been treated as common evidence on either side. Out of the fourteen petitioners of these fourteen cases, ten have been examined as WW1 to WW10 and on the side of the management one common witness has been examined as MW1. For the Petitioner/Workmen seven documents have been marked as Ex. W1 to W7 and for the management twenty three documents have been marked as Ex. M1 to M23 as common documentary evidence in all these cases. The arguments advanced by the learned counsel on either side was heard.

7. The point for my consideration is—

Whether the action of the Management of Pandyan Grama Bank in terminating the employment of Sri G. Subburaj is justified? If not, what relief the concerned workman is entitled to?"

Point —

The Petitioner Sri G. Subburaj has been employed by the management Pandyan Grama Bank as an agent for collecting amounts from the depositors towards Nitham Valar Nithi, a deposit Scheme introduced by the Respondent/Bank. For the petitioner had entered into an agreement with the Respondent/Bank. The Petitioner, as an agent for collecting amount as tiny deposits from the depositors under the said scheme, has to deposit the collected amount in to bank next day. The Petitioner was engaged as such by the Respondent/Bank on commission basis. It is the admission of the Petitioner that he was paid commission on the collection made by him at the rate of 3%. The xerox copy of the S.B. passbook of the Petitioner wherein the payment of his commission has been credited. The Petitioner was engaged for the Vilampatti branch of the Respondent/Bank as a collection agent for tiny deposits under Nitham Valar Nithi Scheme. The Respondent/Management had sent a letter dated 2-3-95 to the Managers of certain branches of the Respondent/Bank informing that as per the advice given by NABARD in the meeting held on 10-1-95 at Madras, the Board of management of Respondent/Bank has also resolved to discontinue the Nitham Valar Nithi Scheme in the branches where the outstanding is less than 5,00,000 as on 31-1-95 and advise the branch not to open any fresh Nitham Valar Nithi account from 1-4-95 and to continue the existing Nitham Valar Nithi accounts in the maturity/closure of period/accounts. The xerox copy of that letter sent to the Manager of Koompatti branch of Pandyan Grama Bank is Ex. W6 as it is sent to Vilampatti branch. In pursuance of the same, the manager of the said branch of the Respondent/Bank, informed the Petitioner a collecting agent under Nitham Valar Nithi Scheme not to open new accounts and thereby the petitioner was not given work by the Respondent/Bank. This non-employment of the Petitioner has been mentioned by the Petitioner in his Claim Statement as

termination of his service indirectly without giving reasons and it is arbitrary and unreasonable. It is the contention of the Respondent/Management in their Counter Statement that during state level review committee meeting convened by NABARD on 10-1-95 at Madras, the matter was discussed and the management of the Respondent/Bank was advised to review the cost factor in continuing Nitham Valar Nithi Scheme and subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme with the bank as discussed at the State level Review Committee meeting and Board of Directors of the bank made review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs 5 lakhs and accordingly the Board of Directors decided to discontinue the scheme in the branches where the Nitham Valar Nithi deposits outstanding is less than Rs 5 lakhs. It is further contended in the Counter Statement that the Respondent/Bank is a public sector bank which continues to incur heavy loss and that when the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same the bank had no alternative but to discontinue the scheme at certain branches and that when the scheme is withdrawn, naturally the agents engaged purely on temporary and commission basis ceased to be engaged further and that was done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. Hence it cannot be considered as unreasonable, arbitrary and in violation of the rights of the Petitioner. It is admitted that because of the decision taken by the Board of Directors of the Respondent/Bank Management Nitham Valar Nithi Scheme has been discontinued by the Respondent/Management when found that the Nitham Valar Nithi deposit outstanding was less than Rs 5 lakhs and that scheme is not economically viable in those branches and in pursuance of the stoppage of the scheme the Petitioners who were engaged as Nitham Valar Nithi deposit collection agents were non-employed by the Respondent/Bank. It is the contention of the Petitioner that it amounts to termination of service and hence the action of the Respondent/Management in terminating the services of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice and also a violation of Section 25F of Industrial Disputes Act. It is further contended that the Division Bench of High Court of Madras has held in a batch of Writ Appeal that the tiny deposit agent is a workman as defined in Section 2(s) of the Industrial Disputes Act and he is not an independent contractor but part of the organisation. The Respondent would contend that Andhra Pradesh High Court in a decision reported in Vol 93 (1998) FJR 144 has held that tiny deposit agents (Nitham Valar Nithi agents) in bank are not workmen and as per the agency agreement, the bank shall also at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice as there is no provision in the agreement to pay compensation and to give notice to the Nitham Valar Nithi agent prior to the termination. There is no violation of section 25F of Industrial Disputes Act and that Nitham Valar Nithi agents are not workmen and the Petitioner cannot complain about the violation of Section 25F and other provisions of Industrial Disputes Act.

1947 since the action of the bank is valid. The question whether the tiny deposit collector for a bank as Nitham Valar Nithi agent is a workman or not has been decided by the Hon'ble Supreme Court in a case reported as (2001) 3 SCC pg 36 INDIAN BANK ASSOCIATION VS WORKMEN SYNDICATE BANK. In that case the Hon'ble Supreme Court has held that these deposit collectors are workmen within the meaning of section 2(s) of Industrial Disputes Act, 1947 and that as seen from Section 2(rr) of the Industrial Disputes Act, the commission received by the deposit collectors is nothing else but wage which is dependent on the productivity. This commission is paid for promoting the business of the various banks and that there is clearly a relationship of master and servant between the management and the deposit collectors. So from this recent decision of the Hon'ble Supreme Court a quietus has been given to the issue whether the tiny deposit collector or Nitham Valar Nithi agent is a workman or not. The learned counsel for the Respondent also has fairly conceded that in view of this decision of the Supreme Court, the Petitioner can be considered as a workman under Industrial Disputes Act.

8 In this industrial dispute the Petitioner has questioned the action of the management of Pandyan Grama Bank in terminating his employment as Nitham Valar Nithi agent as unjustified for the reason that the Respondent/Management has not issued any prior notice of termination, notice pay or compensation which is a violation under section 25F of the Industrial Disputes Act. In the Claim Statement the Petitioner has further asked for the relief that this Hon'ble Court may be pleased to set aside the order dated 2-3-95 and to direct the Respondent to reinstate the Petitioner into service with back wages, continuity of service and all other attendant benefits. In the above cited case the Supreme Court has held that "the persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work and that the mode of selection and qualification are not comparable to those of employees even though the employees may be doing similar work." In the present case, not only on the mode of selection and qualification not comparable, but even the work is comparable. The work which deposit collectors do is completely different from the work which the regular employees do. There was, thus, no question of absorption and there was also no question of the deposit collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the banks. So, in view of this decision of the Supreme Court, the Petitioner cannot claim to be reinstated in service of the Respondent/Bank. Further in view of the discontinuation of Nitham Valar Nithi Scheme in the branch where it was found to be economically not viable by the Board of Directors of the Respondent/Bank, the post of Nitham Valar Nithi collection agents will not be available for the Petitioner to reinstate in service as Nitham Valar Nithi collection agent.

9 The Petitioner has requested this Court to pass an order to set aside the order dated 2-3-95 of the Respondent/Management like the order EX W6 sent to the Manager of Vilampatti branch. A perusal of this letter by Chairman to the Manager of Pandyan Grama Bank regarding stoppage of opening of any fresh Nitham Valar Nithi accounts from 1-4-95 in certain branches of the Bank was a decision taken by Board of Directors of the Respondent/Bank after reviewing the position of economic viability in continuing the scheme any further where the amount

outstanding under the scheme is less than Rs 5 lakhs in certain branches MW1 has also spoken to that effect in his evidence. No contra evidence has been let in by the Petitioner to arrive at a conclusion that the decision taken by the Board of Directors, after the discussion at the State level review committee meeting of the bank in respect of the function of Nitham Valar Nithi Scheme in the bank branches is wrong or incorrect. It is not disputed that the Respondent/Bank is a public sector bank and when the Respondent/Bank found this Nitham Valar Nithi Scheme as not economically viable by considering the cost of effectiveness of the scheme it can take a decision to discontinue the same in the branches where the amount outstanding under the scheme is less than Rs 5 lakhs. This action of the Respondent/Bank Management has been taken only in respect of the bank branches where it was found not economically viable to continue the scheme. So under such circumstances, the decision taken by the Respondent/Management and in pursuance of the same a circular has been issued under Ex W6 cannot said to be an incorrect and unjustifiable decision taken by the Respondent/Management. So the question of setting aside the order dated 2-3-95 like Ex W6 does not at all arise.

10 In view of the earlier discussions on the basis of the decision of the Supreme Court above cited, the Petitioner can be considered as a workman under provisions of the Industrial Disputes Act, so far as his engagement as tiny deposit collection agent under Nitham Valar Nithi Scheme for the bank branch. That being the position, the non-employment of the Petitioner without any prior notice and compensation can be considered as a violation of Section 25F of the Industrial Disputes Act, 1947 as it is contended by the learned counsel for the Petitioner. In the Counter Statement also, it is the contention of the Respondent/Management that as per the Andhra Pradesh High Court decision at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. Under such circumstances, it can be held that the Petitioner as Nitham Valar Nithi agent has been non-employed because of the stoppage of the scheme in the bank branch on the decision taken by the Respondent/Management is entitled to get retrenchment compensation as it is held by the Hon'ble Supreme Court in a case reported as AIR 1968 SC 1219 BETWEEN SANTOSH GUPTA AND STATE BANK OF PATIALA. In that case the Hon'ble Supreme Court has held that Compensation shall be payable to workman, in case of closure of undertaking as if, the workman had been retrenched, as it is provided under section 25 (fff) of Industrial Disputes Act, 1947. It is further observed by the Hon'ble Supreme Court that the manifest object of these provisions is to so compensate the workman for loss of employment as to provide him the where with all to subsist until he finds fresh employment. This decision of the Hon'ble Supreme Court is quite applicable to the present facts of this case. Under such circumstances, it can be concluded that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner as Nitham Valar Nithi Collection Agent is justified, but the Petitioner is entitled for retrenchment compensation under section 25F of Industrial Disputes Act, 1947. Thus the point is answered accordingly.

11 In the result, an Award is passed holding that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner Sri G Subburaj

as Nitham Valar Nithi Collection Agent is justified. The Respondent/Management is directed to pay the Petitioner/Workman as retrenchment compensation the amount equivalent to the amount he has earned as his commission for the period of one year immediately preceding to his non-employment. No Cost.

(Dictated to the Stenographer transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28th March 2002.)

K KARTHIKEYAN Presiding Officer

Witnesses Examined in common for this case and the connected cases -

For the I Party/Workman	WW 1 Sri T Nelson
	WW 2 Sri A. Guruviah
	WW 3 Sri A. Sundararajan
	WW 4 Sri A. Senthilvel
	WW 5 Sri T. Chellan
	WW 6 Sri M. Abdul Rajak
	WW 7 Sri S. Javamalai Perumal
	WW 8 Sri Subburaj
	WW 9 Sri A. L. Ramu
	WW 10 Sri S. Raman

For the II Party/Management	MW 1 Shri S. Sangilipandi
-----------------------------	---------------------------

Documents marked as Exhibits in common for this case and other connected cases —

Ex the I Party/Workman —

Ex No	Date	Description
W1	02-03-84	Xerox copy of the appointment letter issued to Sri A. Guruviah
W2	Nil	Xerox copy of the identity card of Mr R. Sankara Narayana Moorthy issued by the Respondent
W3	Nil	Xerox copy of the S B Passbook of Sri G Subburaj
W4	21-6-85	Original agreement between Sri T Nelson workman and Repondent/Management
W5	Nil	Xerox copy of the Nitham Valarnidhi Scheme
W6	02-03-95	Xerox copy of the letter of Chairman to the Manager, Pandyan Grama Bank regarding stoppage of Opening of any fresh non-deposit account from 1-4-95 in certain branches
W7	26-6-99	Xerox copy of the circular issued by the Chairman of Bank regarding profits accrued

Ex the II Party/Management —

Ex No	Date	Description
M1	31-01-95	Xerox copy of the daily collection list
M2	01-02-95	Xerox copy of the sundry creditor cash voucher

M3	01-11-95	Xerox copy of the weekly consolidation to 7-11-95 register
M4	Nil	Xerox copy of the NVN a/c No 356 ledger extract
M5	27-12-91	Xerox copy of the credit transfer voucher NVN A/c
M6	27-12-91	Xerox copy of the debit cash voucher NVN a/c 92
M7	27-12-91	Xerox copy of the NVN discharged receipt voucher
M8	27-12-91	Xerox copy of the requisition letter for closure of NVN account No 92
M9	18-02-91	Xerox copy of the NVN specimen card No 92
M10	18-12-91	Xerox copy of the voucher for demand loan
M11	18-12-91	Xerox copy of the debit cash voucher NVN Account
M12	18-12-91	Xerox copy of the NVN discharged receipt
M13	15-12-90	Xerox copy of the NVN Speciman card
M14	03-12-93	Xerox copy of the NVN agent S B A/c No 2149
M15	Nil	Xerox copy of the guidelines for NVN Scheme
M16	Nil	Xerox copy of the rule regarding NVN Scheme
M17	Nil	Xerox copy of the NVN agency agreement
M18	Nil	Xerox copy of the letter of the Chairman to all branches to discontinue NVN deposits with list of branches
M19	27-04-93	Xerox copy of the NVN cash receipt
M20	Nil	Xerox copy of the NVN a/c No 607 and 615 ledger copy
M21	Nil	Xerox copy of the ledger copy of Mr Nelson's S B Account No 40
M22	22-02-95 to 2-3-95	Xerox copy of the weekly consolidation register
M23	Nil	Extract of S B Account pertaining to Mr T Nelson

नई दिल्ली, 5 अप्रैल, 2002

का.आ. 1407 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण 1, लेबर कोर्ट, चेन्नई के पंचाट (संदर्भ संख्या आई डी न 105/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-04-2002 को प्राप्त हुआ था।

[सं एल-12012/500/98-आई आर (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi the 5th April 2002

S.O. 1407.—In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref No ID No 105/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the employers in relation to the management of State Bank of India and their workman, which was received by the Central Government on 04-04-2002

[No L-12012/500/98-IR(B-I)]
AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT CHENNAI

Mondav, the 1st April, 2002

PRESENT

K KARTHIKEYAN Presiding Officer

INDUSTRIAL DISPUTE No 105/2001

(Tamil Nadu State Industrial Tribunal I D No 58/99)

(In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act 1947 (14 of 1947) between the Workman Sri S Jeggannathan and the Management of State Bank of India Madurai

BETWEEN

Sri S Jeggannathan

I Party/Workman

AND

The Zonal Manager
State Bank of India
Madurai

II Party
Management

APPEARANCE

For the Workman

Sri R. Jaikumar,
Advocate

For the Management

Sri N Thiragarajan,
Advocate

The Govt of India Ministry of Labour, in exercise of the powers conferred by clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of Industrial Dispute Act 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No L-12012/500/98/IR (B-I) dated 22-03-99

This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, Chennai where it was taken on file as I D No 58/99. When the matter was pending enquiry in that Tribunal The Government of India Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal of adjudication. On receipt of records from that Tamil Nadu State Industrial Tribunal the case has been taken on file as I D No 105/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal with a direction to appear before this Tribunal on 31-01-2001 with their respective parties and to prosecute this case further. Accordingly the learned counsel on either side along with their respective parties have appeared and prosecuted this case by filing their Claim Statement and Counter Statement respectively.

3 When the matter came up before me for final hearing on 05-03-2002, upon perusing the Claim Statement, Counter Statement, the other material papers on record, documentary evidence let in on either side, and after hearing the arguments advanced by the learned counsel on either side, this matter having stood over till this date for consideration, this Tribunal has passed the following —

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt for adjudication by this Tribunal is as follows —

“Whether the action of the Management of State Bank of India in terminating the services of Sri S Jegannathan with effect from 3-1-98 is justified? If not, what relief is he entitled to?”

2 The averments in the Claim Statement of the I Party/ Workman Sri S Jegannathan (hereinafter refers to as Petitioner) are briefly as follows —

The Petitioner was appointed as a Clerk-cum-Cashier on 10-11-78 in Sattur Branch of the II Party/Management State Bank of India. From the date of his appointment, the Petitioner was doing his service without any defect and earned better name for himself as well as to his institution, II Party/State Bank of India Management. The Petitioner was transferred to Manali. One sub-staff Mr M G Soundararajan who has been transferred from Nellikuppam Branch and other juniors in the office were causing hardship to the Petitioner in the Manali Branch. The II Party/Management issued a chargesheet dated 20-03-92. He submitted his reply on 24-3-92. Without any enquiry, the Respondent/Management has punished the Petitioner by cutting his one month salary of Rs 4074. The Petitioner became a diabetic patient. He applied for transfer to Sivakasi Branch after shifting his family to Tiruthangal. The Petitioner was transferred to Rajapalayam Branch instead of Sivakasi Branch on 13-11-92. The II Party/Management has refused to sanction travelling allowance, claimed by the Petitioner and the Petitioner was agitating for his claim of T A and also the omission of two and half months leave accumulated to him in crediting his leave account. The 2nd chargesheet dated 25-10-93 was issued to the Petitioner. Agitating that action of the II Party/Management, the Petitioner filed a suit O S No 241/94 in the District Munsif Court at Srivilliputhur. After receiving that notice, the II Party/Management conducted an enquiry ex-parte and awarded punishment by cutting one increment for two years from 1-6-94 to 31-5-96. Even though, the Court directed the bank to start its domestic enquiry by an order under I A 735/94, II Party/Management has not complied with the direction of the Court. Then the Petitioner has filed a Writ Petition No 220/94, wherein the High Court has given a direction to the II Party/Management to produce the papers into Court, but the II Party/Management was unable to produce the same. The II Party/Bank Management had conducted one investigation through Sri Rajapandian, Branch Manager of Tenkasi Branch. He received the depositions on 8-10-94 and furnished the investigation report on the same day. No further action was taken by the II Party/Management. But the Petitioner was transferred to Tiruchuli Branch on 12-10-94 stating it is for administrative grounds. Based on the investigation at Tiruchuli Branch, the Petitioner was issued show cause notice dated 30-11-94. In addition to that a transfer order dated 12-10-94 was issued to the Petitioner, which he received under protest. He was compelled to take leave for four months

after submission of his reply to show cause notice dated 30-11-94 the II Party/Management stopped in taking further action. The Petitioner filed a Writ Petition 1812/95 challenging the transfer order. The High Court has passed an order in the Writ Petition No 1812/95 in favour of the Petitioner but with one condition that the Petitioner has not given any written statement to the II Party/Management to waive all his promotions. According to the Court order, the Petitioner should be transferred to Rajapalayam Branch again. But the II Party/Management had taken steps to remove the Petitioner from service. When the Petitioner was working at Tiruchuli Branch, he was prohibited from doing officiating for years. He was refused PF loan, drought loan, children's scholarships etc. Even after the lapse of punishment period from 1-6-94 to 31-5-96, the II Party/Management restricted the Petitioner from doing his rightful officiating. Since there was no proper representation or response from the II Party/Management, the Petitioner had been doing his rightful officiating. Further no memo was issued by the II Party/Management to the Petitioner. Without prior notice, the Petitioner was issued the order of suspension dated 29-8-96. Then the Petitioner filed a Writ Petition No 12529/96 challenging the same. The II Party/Management had not followed guidelines and instructions and provisions of Bipartite Settlement. The High Court has directed the II Party/Management to conduct domestic enquiry. The Petitioner was not paid one third of subsistence allowance during his period of suspension. After completion of twelve months, the II Party/Management did not pay the Petitioner full salary. The Enquiry Officer submitted his report stating that the charges have been proved. The allegation in the 3rd chargesheet dated 30-11-96 are all fabricated and false because of the difficulties caused to the Petitioner due to the action taken against him by the II Party/Management. The Petitioner is entitled to claim compensation of Rs 2,00,000. It is prayed that this Hon'ble Court may be pleased to pass an order directing the II Party/Management to reinstate the Petitioner immediately in service with all other benefits.

3 The averments in the Counter Statement of the II Party/Management State Bank of India, Madurai (hereinafter refers to as Respondent) are briefly as follows —

The Petitioner has already filed a Writ Petition No 4859 of 1998 before the High Court of Madras praying for reinstatement in service with all back wages as he has claimed in this petition. That Writ-Petition is pending. The averments of the Petitioner that ever since the date of his appointment he was doing his service without any defect is denied as false. In 1985, the Petitioner's behaviour and conduct became the subject matter of misconducts, since he refused to obey the reasonable and legitimate instructions of his superiors as well as discourteous to customers. Complaints were received from his colleagues also. The Regional Manager advised the Petitioner so that he would improve himself. In 1986 the Petitioner was transferred to Manali Branch at his request. The Petitioner was chargesheeted on 20-3-92 for assaulting his colleague. On pure sympathy, to give an opportunity to the Petitioner to mend his ways, further proceedings were dropped. The allegation that the bank punished him with one month's salary cut without enquiry is incorrect. On the request of the Petitioner, by his application dated 4-6-92, he was transferred to Rajapalayam Branch. When he was at Rajapalayam Branch, the charge sheet dated 25-10-93, for

seven lapses of misconduct of the Petitioner was issued to him and a full fledged enquiry was conducted by an Enquiry Officer. In the enquiry, the Petitioner was given very opportunity. The Enquiry Officer found the Petitioner guilty of all the seven charges and on the basis of his report, Disciplinary Authority on 31-5-94, imposed a punishment of reduction of basis pay to the next lower stage upto a maximum period of two years. The Petitioner challenging the enquiry proceedings filed the case No 241/94 with a view to protract the enquiry proceedings. During the enquiry proceedings, the Petitioner refused to receive the copies of documents relied on the management. He refused to receive the copies of very proceedings and the findings of the Enquiry Officer, but filed a Writ Petition No 220 of 94 in the High Court and Pleaded for supply of those documents. In the order the High Court has commented upon the conduct of the Petitioner. Subsequently, the Petitioner was transferred to Tiruchuli branch on administrative grounds. He filed a Writ Petition in Madras High Court W P No 1812 of 1995, while disposing that case, the High Court has observed that as the Petitioner is willing to remain in the same branch he is directed to give representation to the bank and on receipt of the same, Management shall pass appropriate orders. However, the Petitioner had never given a representation. The allegation that the Petitioner was compelled to take leave for four months and that the bank has been taking revengeful action to remove the Petitioner from service are nothing but fanciful and imaginary allegations of the Petitioner and they devoid of any merit. Ever since his transfer to Tiruchuli branch, the Petitioner was behaving in a highhanded manner and was quarrelling with the Branch Manager and other staff members. He was required to report for duty in the branch at 10 00 am. But he was habitually coming late. Claiming that the branch is far off from his native place and that there was no sufficient transport facilities. Tiruchuli branch used to give officiating charge to the clerical staff to act as an officer at the time of commencement of working hours. Hence, the Petitioner used to shout at the Branch Manager making all sorts of irrelevant allegations. The Petitioner was placed under suspension w e f 30-8-1996. By a memo dated 25-9-96 the Petitioner was informed about his misbehaviour and was asked to give explanation. On 17-10-96, he gave a reply and as it was not satisfactory, a charge sheet was issued to him on 30-11-96 listing 12 charges. The Petitioner challenged the same by filing a Writ Petition No 12529/96 which was dismissed by the High Court of Madras. The Petitioner was called upon to show cause why disciplinary action shall not be taken against him. He gave an explanation to the charge sheet on 17-12-96. As it was not satisfactory he was asked to appear for an enquiry. After conducting a full fledged enquiry on the said charges, the Enquiry Officer gave his report holding that all the charges against the Petitioner were conclusively proved. The Disciplinary Authority forwarded a copy of the findings of the Enquiry Officer to the Petitioner with a direction to give his reply for the same. On 27-11-97 the Petitioner gave his reply by a communication dated 10-12-97. The Disciplinary Authority had recorded his concurrence to the findings of the Enquiry Officer and proposed a punishment of dismissal without notice and treating the suspension period as one of suspension only. The Petitioner was asked to appear for personal hearing before the Disciplinary Authority on 30-12-97. He appeared and submitted a written memorandum. After examining the Petitioner's representation, the Disciplinary Authority passed the

orders on 3-1-98 confirming the proposed punishment of dismissal without notice and treating his suspension as one of suspension only. The Petitioner preferred and appeal against the order of punishment passed by the Disciplinary Authority. On 19-2-98 the Petitioner along with his defence representative appeared before the Appellate Authority for a personal hearing. After considering the relevant facts of this case, the Appellate Authority reviewed the punishment and took a lenient view by reducing the punishment to discharge from bank service from dismissal without notice. The bank has paid subsistence allowance to the Petitioner till 3-1-98. The enquiry was conducted properly and all the necessary documents including enquiry proceedings were given to the Petitioner. The Petitioner filed a consumer petition No 50/98 before the Consumer Forum, Srivilliputhur on 4-5-98 for directions for payment of pension and compensation of Rs 2,00,000/- per year for his alleged mental agony. The bank had filed the Counter Statement that Consumer Petitioner was dismissed on 17-2-1999. There is absolutely no violation of the established procedure in the matter of conduct of enquiry. The charges against the Petitioner are all true and were all duly established in the enquiry. The findings of the Enquiry Officer are based on cogent evidence and they are fully supported by convincing reasons. The findings of the Enquiry Officer are fully justified. At no point of time, the Petitioner had expressed any difficulty in understanding the charges. Throughout his tenure of employment, the Petitioner was conducting himself in a manner unbecoming of a bank employee and therefore, it cannot said that he had an unblemished record of service. Having regard to the gravity of the charges proved against the Petitioner, the punishment of discharge from the banking service, cannot be said to be harsh and excessive. The Petitioner in his entire tenure would show how Managers/Officers were humiliated and how his acts of indiscipline reached the stage of intolerance with passage of time during his tenure in the bank by his unruly acts of commissions and omissions. He had lowered the image of the bank among the public and morale of his colleagues in the bank. The Petitioner is not entitled to any relief and to claim compensation of Rs 20,00,000/- from the bank. His claim is neither maintainable under law nor on facts. The Petitioner is not entitled to claim reinstatement and any other relief. He is entitled to receive only the terminal benefits and no other amount is due to Petitioner from the bank. The Petitioner has refused to receive the terminal benefits. Therefore, it is prayed that this Hon'ble Court may be pleased to pass orders dismissing the petition with exemplary cost.

4 When the matter was taken up for enquiry finally, apart from the documents marked on either side by consent as E\ W1 to W6 and M1 to M15, further documents on either side were marked by consent of both the parties as E\ W7 W14 and M16 to M18. The I Party himself has advanced his arguments and on behalf of the II Party/Management the learned counsel on record has advanced his arguments. No oral evidence has been let in on either side.

5 The Point for my consideration is—

‘Whether the action of the Management of State Bank of India in terminating the service of Sri S. Jegannathan with effect from 3-1-98 is justified? If not, what relief is he entitled?’

Point :—

The Petitioner was appointed as a Clerk cum Cashier on 10-11-78 in Sattur Branch of the Respondent/State Bank

of India. It is alleged by the Petitioner in his Claim Statement that from the date of his appointment, he was doing his service without any defect and earned a good name. But this has been denied by the Respondent in their Counter Statement and it is alleged that in 1985 the Petitioner's behaviour and his conduct became subject matter of misconducts, since he refused to obey reasonable and legitimate instructions/orders of his superiors as well as discourteous to customers and complaints were received from his colleagues also. The Regional Manager, therefore, advised the Petitioner suitably, so that he would manage himself. It is further alleged that in 1986 at his request, the Petitioner was transferred to manali Branch. It is admitted that the charge sheet dated 20-03-1992 was issued to the Petitioner by the Respondent/Management for assaulting a colleague of the Petitioner and it is contended by the Respondent that out of pure sympathy further proceedings were dropped to give an opportunity to the Petitioner to mend his ways. It is also admitted that the Petitioner gave a transfer application dated 4-6-92 asking for transfer to Rajapalayam branch and the Petitioner was given transfer to Rajapalayam branch and he reported for duty at Rajapalayam branch on 23-11-92. While the Petitioner was at Rajapalayam, another charge sheet dated 25-10-93 for seven lapses was given alleging disobedience and disturbed the Branch Manager in his cabin, indecent behaviour, displayed placards/poster in his counter, refused to initial an office order for change of duties, sat on the floor by stretching both legs in the branch premises and not punctual in attendance and marked timings as he thought. For this, a full fledged enquiry was conducted by an Enquiry Officer and the Petitioner was given every opportunity. The Enquiry Officer found him guilty of all the said charges and the Disciplinary Authority imposed the punishment of reduction of basic pay to the next lower stage upto a maximum period of two years on 31-5-94. Challenging this decision of the Respondent/Management, the Petitioner has filed a case in O S No 241/94 only to protract the enquiry proceedings. But it ended in a failure. It is also contended in the Counter Statement of the Respondent/Management that as and when the management has initiated disciplinary proceedings against the Petitioner for his misconducts, the Petitioner used to file Writ Petitioner in High Court, but all of them were not successful. It is further contended by the Respondent/Management that on administrative grounds, the Petitioner was transferred to Tiruchuli Branch. Then the Petitioner filed a Writ Petition in the Madras High Court in W P No 1812 of 1995 and it was disposed of by the High Court with an observation that as the Petitioner is willing to remain in the same branch, he is hereby directed to give a representation to the bank and the bank management on receipt of the same, shall pass appropriate orders on the said representation. However, the Petitioner had never given a representation as directed by the High Court. It is further contended by the Respondent that ever since his transfer to Tiruchuli branch, the Petitioner was behaving in a highhanded manner and was quarrelling with the Branch Manager and other staff members. When he was required to report for duty in the branch at 10.00 am, he used to come to office late claiming that the branch is far off from his native place and that there was no sufficient transport facilities. Further the Petitioner used to shout at the Branch Manager making all sorts of irrelevant allegations. So, he was placed under suspension w.e.f. 30-03-96 and that a memo dated 25-9-96 was issued to the Petitioner about his misbehaviour and was asked to give explanation. On

17-10-96, he gave a reply and since his explanation was not satisfactory, a charge sheet alleging 12 acts of misconducts was issued to the Petitioner on 30-11-96 and that the Petitioner has given an explanation to the charge sheet on 17-12-96 and his explanation was not satisfactory. So, the Petitioner was asked to appear for an enquiry. After a full fledged enquiry was conducted on the above charges mentioning 12 acts of misconducts that while working in Tiruchuli branch, the Petitioner unauthorisedly passed 14 vouchers both credit and debit when he was not empowered to with such officiating powers from 12-7-96 to 30-7-96, that he has posted savings bank withdrawal slip for Rs 354/- on 17-8-96 in his account, when a actual balance was only Rs 2/- and sent the voucher for passing and he repeated this act for another three times and thus tampered with bank's accounts, that he has written some unwanted comments in branch attendance register after striking the Branch Manager's remarks on his late coming and when he was questioned by the Branch Manager, he made derogatory remarks against the management in the banking hall and attested signatures of a customer in the account opening form as an officer unauthorisedly, and that checked S B day book without proper authority on six occasions in 1996 under full signature and written some comments in the S B ledger accounts in two occasions in 1996 when he was not empowered to do so, that unauthorisedly cancelled S B vouchers on 23-7-96 and 25-7-96, that unauthorisedly cancelled authenticated initials of checking officials in the S B ledgers, that on 15-2-96 he should at the Branch Manager in the presence of staff and customers while submitting an explanation for O D limit, against his LIC Policy, that he made derogatory remarks in writing against Branch Manager's noting against his late arrivals in the attendance register on 17-7-96, that on 18-7-96 he shouted at the Branch Manager when he was questioned for his late arrival and challenged the latter's authority by uttering unwanted lengthy remarks in Tamil in the bank's premises, that on 23-8-96 he placed derogatory placards over his counter in the branch with awkward and indecent comments including the caste of the Branch Manager, that from 19-8-96 to 24-8-96 he attended duty without wearing shirt and thereby spoiled the image of the bank besides embarrassing the staff and the customers at the branch, and that he made derogatory remarks against LHO officials in the banking hall. It is further alleged in the Counter Statement of the Respondent that the domestic enquiry was held from 27-6-97 to 22-9-97 and in that enquiry, eight witnesses were examined in support of the charges and the Petitioner examined himself. On 18-11-97 the Enquiry Officer gave his report holding that all the charges against the Petitioner were conclusively proved and by a communication dated 22-11-97, the Respondent/Management, the Disciplinary Authority has forwarded a copy of the findings of the Enquiry Officer and invited the Petitioner to make his claim on the findings. On 27-11-97, the Petitioner gave his reply by a communication dated 10-12-97. The Disciplinary Authority recorded his concurrence to the findings of the Enquiry Officer that the charges against the Petitioner were proved and proposed a punishment of dismissal without notice and also treating the suspension as one of suspension only. However, the Petitioner was asked to appear for the personal hearing before the Disciplinary Authority on 30-12-97 and on his appearance on 30-12-97 and submission of written memorandum, the Disciplinary Authority after examining his representation passed orders on 3-1-98 confirming the proposed punishment of dismissal without notice and also

Ex. M6 is the xerox copy of the charge sheet dated 30-11-96 and Ex. M7 is the xerox copy of the punishment order dated 3-1-98 and Ex. M8 is the xerox copy of the order of Appellate Authority dated 21-2-98 reducing the punishment of dismissal without notice to discharging the Petitioner from bank service. Ex. M10 to M14 are the xerox copies of the orders passed by the Courts in various proceedings taken by the Petitioner against the management in respect of the disciplinary proceedings for his alleged misconducts. A perusal of all these Court proceedings, orders clearly show that the Court have found that the alleged misconducts levelled against the Petitioner by the Respondent/Management clearly show that they are gross misconducts and those proceedings taken by the Petitioner against the Respondent/Management are devoid of merits. From the perusal of the documents filed on either side, it is seen that the disciplinary proceeding has been taken by the Respondent/Management against the Petitioner's misconduct and sufficient, fair opportunity was provided to the Petitioner to defend himself effectively in the domestic enquiry and after conducting the domestic enquiry following the procedures and rules and adopting the principles of natural justice, the Enquiry Officer had come to the conclusion that the charges levelled against the Petitioner are proved. On the basis of the findings given by the Enquiry Officer, as it is seen from the enquiry proceedings, the Disciplinary Authority had first imposed the punishment of dismissing the Petitioner from service, later, it was reduced by the Appellate Authority as discharge from bank service. From all these documents, it is evident that the alleged misconducts are grave in nature and the Appellate Authority has viewed leniently and passed an order modifying the punishment imposed by the Disciplinary Authority from 'dismissal from service without notice' to "discharge from service". A perusal of these documents filed on either side clearly show that there is no violation of any procedure or provision of law in conducting the domestic enquiry. The averments in the Petitioner's Claim Statement and the contention of the Petitioner that the domestic enquiry has been conducted by the Respondent/Management in violation of the provisions of law and principles of natural justice are incorrect. Since the Enquiry Officer has given his findings on the basis of the evidence as charges levelled against the Petitioner are proved, there is no scope for this Tribunal to interfere with that findings on the ground that it is a perverse finding given by the Enquiry Officer without any legal evidence. Further, a perusal of the orders passed by the Disciplinary Authority as well as the Appellate Authority clearly show that after considering the representation made by the Petitioner and also the relevant records, they have come to the correct conclusion in imposing the punishment against the Petitioner for the proved misconduct of the Petitioner in respect in the charges levelled against him. The Appellate Authority has correctly come to the conclusion in reducing the punishment of 'dismissal from service without notice' to one of 'discharge from service' and it was done by the Appellate Authority with a sympathetic view and it cannot be said as incorrect or improper. In view of this decision of the Appellate Authority in passing an order by reducing the punishment imposed by the Disciplinary Authority and considering the gravity of the proved misconduct of the Petitioner, there is no scope for this Tribunal to interfere with that punishment imposed by the II Party/Management on the Petitioner by using the discretion under Section 11A of the Industrial Disputes Act, 1947. The punishment

imposed by the II Party/Management against the Petitioner by discharging him from bank service cannot be considered as disproportionate to the gravity of the proved misconduct of the Petitioner/Workman. Under such circumstances, I find no reason to come to a different conclusion and to hold that the action of the management taken against the Petitioner is unjustified. Thus, the point is answered accordingly.

7 In the result, an Award is passed holding that the action of the management of State Bank of India in terminating the service of Sri S. Jegannathan with effect from 3-1-1998 is justified. Hence, the concerned workman is not entitled to any relief. No Cost

(Dictated to the Stenographer, transcribed and type by him, corrected and pronounced by me in the open court on this day the 1st April, 2002)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :

On either side None

Exhibits marked :

For the I party/workman

Ex. No.	Date	Description
W1	20-03-92	Xerox copy of the charge sheet issued to Petitioner
W2	04-06-92	Xerox copy of the advocate notice given by Petitioner
W3	04-06-92	Xerox copy of the application of the Petitioner for Transfer
W4	27-08-94	Xerox copy of the note of Branch Manager for the disciplinary action taken on the Petitioner
W5	12-10-94	Xerox copy of the order of transfer issued to Petitioner
W6	06-02-99	Xerox copy of the advocate notice given by Petitioner to the Deputy General Manager, State Bank of India
W7	04-07-97	Xerox copy of the letter of the Petitioner to Assistant General Manager objecting to the appointment of Enquiry Officer
W8	13-11-97	Xerox copy of the enquiry proceedings
W9	25-09-96	Xerox copy of the show cause notice issued to the Petitioner by Assistant General Manager
W10	17-10-96	Xerox copy of the explanation given by the Petitioner to the show cause notice
W11	27-11-97	Xerox copy of the reply to 2nd show cause notice
W12	30-12-97	Xerox copy of the explanation given by the Petitioner to charge sheet
W13	21-01-98	Typed copy of the letter of the Petitioner to the Deputy General Manager against the order of dismissal
W14	21-01-98	Xerox copy of the letter submitted by the Petitioner to Deputy General Manager requesting him to reconsider for appointment

For the II Party/Management :

Ex. No.	Date	Description
M1	17-12-92	Xerox copy of the T A bill of the Petitioner for Rs 2301/- with LR No 120996
M2	16-03-93	Xerox copy of the letter of Assistant General Manager to the Chief Manager, Rajapalayam branch regarding sanction of T A Bill of Petitioner
M3	25-10-93	Xerox copy of the charge sheet issued to the Petitioner
M4	31-05-94	Xerox copy of the punishment order issued to the Petitioner
M5	16-02-95	Xerox copy of the letter of the Petitioner to the Branch Manager requesting to grant T A
M6	30-11-96	Xerox copy of the 2nd charge sheet issued to the Petitioner
M7	03-01-98	Xerox copy of the punishment order
M8	21-02-98	Xerox copy of the order of Appellate Authority
M9	05-12-98	Xerox copy of the letter of Branch Manager to the Assistant General Manager, Madurai
M10	03-02-95	Xerox copy of the order in I A 735/94 in O S 241/94 passed by District Munsif Court, Srivilliputhur
M11	02-02-95	Xerox copy of the order passed in Writ Petition No 220/95 by the High Court of Madras
M12	14-02-96	Xerox copy of the order of High Court of Madras in WP No 1812 of 1995 and WMP 2882 of 1995
M13	14-02-97	Xerox copy of the order of High Court of Madras in WP No 12529 of 1996
M14	02-04-98	Xerox copy of the order of High Court of Madras in W M P No 7514/98 in WP No 4859/98
M15	17-02-99	Xerox copy of the order in O S No 50/98
M16	17-12-96	Typed copy of the representation submitted by Petitioner to Assistant General Manager
M17	22-11-97	Xerox copy of the letter of Disciplinary Authority to the Petitioner enclosing the copy of the findings of the Enquiry Officer
M18	19-02-98	Xerox copy of the appeal preferred by the Petitioner to the Deputy General Manager against the order of Dismissal

नई दिल्ली, 5 अप्रैल, 2002

का.आ. 1408.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पांडेयन ग्रामा बैंक के प्रबंधन के सदस्य नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक

अधिकरण लेबर कोर्ट चेन्नई के पंचाट (संदर्भ संख्या आई डी नं 474/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-04-2002 को प्राप्त हुआ था।

[सं. एल-12012/63/97-आई.आर. (बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 5th April, 2002

S.O. 1408 .—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref No I D No 474/2001) of the Central Government Industrial Tribunal-cum-Labour Court Chennai as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Pandyan Grama Bank and their workman, which was received by the Central Government on 04-04-2002

[No L-12012/63/97-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 28th March 2002

PRESENT

K Karthikeyan, Presiding Officer

INDUSTRIAL DISPUTE No 474/2001

(Tamil Nadu State Industrial Tribunal I D No 15/98)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the workman Sri S Raman and the Management of Pandyan Grama Bank, Virudhunagar)

BETWEEN

Sri S Raman I Party/Workman

AND

The Chairman, II Party/Management
Pandyan Grama Bank, Virudhunagar

Appearance

For the Workman M/s PVS Girdhar
Devi Shankar &
R Srinivasan,
Advocates

For the Management M/s Row & Ready
S Vaidhyanathan &
W T Prabakar,
Advocates

The Govt of India, Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947) have referred the concerned dispute for adjudication vide Order No L-12012/63/97/IR (B-I) dated 30-12-97

2 This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, Chennai where it was taken on file as I D No 15/98. When the matter was pending enquiry in that Tribunal, The Government of India, Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tamil Nadu State Industrial Tribunal, the

case has been taken on file as I D No 474/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 02-03-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case by filing their Claim Statement and Counter Statement respectively.

3 When the matter came up before me for final hearing on 14-02-2002, upon perusing the Claim Statement, Counter Statement, the other material papers on record, the oral and documentary evidence let in on either side and after hearing the arguments advanced by the learned counsel on either side, this matter having stood over till this date for consideration, this Tribunal has passed the following —

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt for adjudication by this Tribunal is as follows —

Whether the action of the Management of Pandyan Grama Bank in terminating the services of Sri S Raman is legal and justified? If not, what relief the workman is entitled to?

4 The averments in the Claim Statement of the I Party/Workman Sri S Raman (hereinafter refers to as Petitioner) are briefly as follows —

The Petitioner was appointed as a commission agent in the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) as part of a scheme called Nitham Valar Nithi Scheme, by an order of appointment dated 18-02-1982. He was appointed as collection agent on prior approval of the Head Office by signing an agreement with the Respondent/Bank. He had furnished a security deposit of Rs 1000/- He was paid commission on the collection made by him at the rate of 3%. He should remit the entire collection made on the previous day into the bank before the banking hours on the next day. If he fails to do so, he will loose 50% of the commission on the amount collected and in case of default exceeding one day, he will loose the entire commission. The workman is taken to task, when any depositor closes the account within a period of six months to twenty four months from the date of opening of the said account. There will be a reduction of the commission payable to the agent in that event. For all acts of commission and omission of the nominee, the collection agent will be responsible and answerable to the bank. The Respondent has issued a letter to the Manager dated 2-3-95 not allowing to open new accounts if the deposit on the head of 'NVN' account is less than five lakhs. Thus the number of accounts dwindled with consequent decrease in the earning of the deposit collectors. As such, the Respondents have failed to give work to the Petitioner. Hence, this action of the Respondent in terminating the service of the Petitioner indirectly without giving reasons is arbitrary and unreasonable. The Petitioner filed a petition before the Assistant Labour Commissioner on conciliation seeking to reinstate the Petitioner with back wages and continuity of service. On failure of conciliation efforts taken by the Assistant Labour Commissioner, he submitted a failure of conciliation report to the Government, which in turn referred this matter as an industrial dispute for adjudication by this Tribunal. The unopposed order is

arbitrary and unreasonable and violative of the Petitioner's rights under Articles 14, 16 and 21 of the Constitution. The Division Bench of High Court Madras, in a batch of appeals has held that there is sufficient control over the work of Tiny Deposit Agents by the bank, that the Tiny Deposit Agent is a workman as defined in section 2(2) of the Industrial Disputes Act and that such a Tiny Deposit Agent is not an independent contractor but part of the organisation. Though in the letter of appointment issued by the bank to the Petitioner, commission was fixed payable to the Petitioner at 3% on the total collection made by the Petitioner each month, clause 16 of the agreement provided that the commission could be determined by the bank time to time. As per rule of the scheme, opening of the account should be done only after the supervisory official authorises the same, though the collecting agent is permitted to receive deposits from door to door. This is an important circumstance which shows that the collecting agent is not an independent contractor so as to enrol customers of the bank on his own. The Tiny Deposit Agent is undoubtedly engaged in the business of the bank i.e. the deposit mobilisation. The remuneration of the Tiny Deposit Agent is fixed in the agreement. Though it is called commission, it will still be remuneration as defined by the decisions of the Supreme Court as well as the definition of the wages in the Industrial Disputes Act. The nature of work of the Petitioner demands daily attendance in bank and deposit of the collections made by him on the previous day. The Petitioner has to do some clerical work as he is bound to fill up relevant forms, ledgers, pass books, etc. The Petitioner should furnish a security deposit of Rs 1000/- which will be placed in fixed deposit for a minimum period of three years. The bank can instruct the agent not to enrol new subscribers at any time. The provision enabling the agent to terminate the agency on giving the bank a month's notice is the circumstances, which goes to show that it is a contract of service. The impugned order of the Respondent does not allow the workmen to open a fresh account under 'NVN' scheme and thereby terminated the services of the Petitioner. The action of the Respondent in terminating the service of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice. The action of the Respondent in terminating the service of the Petitioner is violative of Chapter VA and Chapter VB particularly section 25F of the Industrial Disputes Act. No notice has been served prior to the issuance of the said order, nor was retrenchment compensation paid. The Govt. Ministry of Finance issued a directive not to wind up the said scheme. Many of the nationalised banks which were virtually winding up the said scheme restored it. Therefore, it is prayed that this Hon'ble Court may be pleased to set aside the impugned order dated 2-3-95 and direct the Respondent to reinstate the Petitioner in service with back wages continuity of service and all other attendant benefits.

5. The averments in the Counter Statement filed by the II Part/Management Pandyan Grama Bank (hereinafter refers to as Respondent) are briefly as follows —

The Petitioner was engaged as Nitham Valar Nithi Scheme agent from 18-07-1982. Unlike the regular employees of the bank he was not paid salary. He was paid only commission depending upon the amount of deposit collected. Unlike the regular bank employees he was not required to attend the bank daily or sign the attendance register. He was not required to attend to any other work in the bank. His work consisted in collecting

tiny deposits and deposit them into the bank the next day. He may not be doing collection work not more than twice a week. He is governed by the Agency agreement. Unlike other employees, he was not subject to the disciplinary control of the bank and there are no fixed hours of work. The Nitham Valar Nithi Scheme was in operation in the Respondent/Bank since 1979. During State Level Review Committee meeting convened by NABARD on 10-01-95 at Madras, this matter was discussed and the Respondent was advised to review the cost factor in continuing Nitham Valar Nithi Scheme. Subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme in the bank as discussed at the State level Review Committee meeting. On that basis, the Board of Directors of the bank made a review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs 5,00,000/-. Accordingly, the bank during the Board of Directors' meeting held in February, 1995 decided to discontinue the scheme at the branches, where Nitham Valar Nithi Scheme deposit outstanding was less than Rs 5 lakhs. When this was implemented, the outstanding under Nitham Valar Nithi Scheme in Keelapoongudi branch was less than Rs 5 lakhs. Moreover, the agency agreement entered into between the bank and the Petitioner clearly states that the bank shall also be at liberty to terminate the agency any time without assigning any reason whatsoever. The Respondent/Bank is a public sector bank which continues to incur heavy loss. When the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches. When the scheme is withdrawn naturally the agent engaged purely on temporary and commission basis ceased to be engaged further. This has been done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. This by no stretch of imagination can be considered unreasonable arbitrary and violative of the rights of the Petitioner. NVN rules provides that the depositor may open the account through the collection agent authorised by the bank in this behalf. Thus, it is clear that the Nitham Valar Nithi agent is free to open an Nitham Valar Nithi account on his own. The Nitham Valar Nithi agents were not the employees of the bank as their relationship with the bank was only that of contract for service and not contract of service. Nitham Valar Nithi agents need not comply with the minimum conditions stipulated for recruitment as employees of the bank such as age, qualification etc. They were engaged purely on commission basis. Even though, he attended collection work in a day, but no collection is effected he would not be paid commission for that day. So, the commission cannot be treated as wages. Quite recently, the Andhra Pradesh High Court has held in a case that tiny deposit collectors/Nitham Valar Nithi agents in bank are not workmen. The Nitham Valar Nithi agents come to the branch only when they have to remit the amount they collected towards Nitham Valar Nithi Scheme. He has to fill up only specific forms such as list of accounts in which he had made collection and enter the amount collected in the pass book. Though Nitham Valar Nithi agents were authorised to enter in the passbook, it is not authoritative and it is subject to verification by the bank with the Nitham Valar Nithi ledger. Nitham Valar Nithi agent was not required to attend any other work in the bank. Nitham Valar Nithi agents are not

workman, even assuming so they cannot complain about violation of Section 25F and other provisions of the Industrial Disputes Act, 1947 as the action of the bank is valid as per section 2(o) 2(bb) of the Industrial Disputes Act, 1947. The Petitioner has signed the agreement wherein stipulation No. 5 of the agency agreement states that the bank shall also be at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice. There is no provision in agency agreement saying that notice should be issued to Nitham Valar Nithi agents prior to their termination and also there is no provision in the agreement to pay compensation. Hence, there is no violation of section 25F of the Industrial Disputes Act, 1947. In any event, he cannot claim reinstatement because there was no post of Nitham Valar Nithi agent. It was only an agency between the Petitioner and the bank and the scheme came to be abolished as far as Keelapongudi branch is concerned. That is why the Andhra Pradesh High Court has held at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. For all the reasons mentioned it is prayed that this Hon'ble Tribunal may be pleased to pass an award rejecting the claim of the Petitioner with cost.

6. When the matter was taken up finally for enquiry, the learned counsel appearing on either side represented that a joint trial can be held for this case along with the other similar cases, 13 in number. The evidence let in on either side both oral and documentary can be treated as a common evidence in all these 14 cases. As per their request, a joint trial has been conducted and evidence recorded in these cases along with other cases have been treated as common evidence on either side. Out of the fourteen petitioners of these fourteen cases, ten have been examined as WW1 to WW10 and on the side of the management one common witness has been examined as MW1. For the Petitioner/Workmen seven documents have been marked as Ex W1 to W7 and for the management twenty-three documents have been marked as Ex M1 to M23 as common documentary evidence in all these cases. The arguments advanced by the learned counsel on either side was heard.

7. The Point for my consideration is—

“Whether the action of the Management of Pandyan Grama Bank in terminating the services of Sri S. Raman is legal and justified? If not, to what relief the workman is entitled?”

Point —

The Petitioner Sri S. Raman has been employed by the management of Pandyan Grama Bank as an agent for collecting amounts from the depositors towards Nitham Valar Nithi, a deposit Scheme introduced by the Respondent/Bank. For that the Petitioner had entered into an agreement with the Respondent/Bank. The Petitioner, as an agent for collecting amount as tiny deposits from the depositors under the said scheme, has to deposit the collected amount into the bank next day. The Petitioner was engaged as such by the Respondent/Bank on commission basis. It is the admission of the Petitioner that he was paid commission on the collection made by him at the rate of 3%. The xerox copy of the S. B. pass book of the Petitioner wherein the payment of his commission has been credited. The Petitioner, as an agent for the Keelapongudi branch of the Respondent/Bank, was acting as a collection agent for tiny deposits under Nitham Valar Nithi Scheme. The

Respondent/Management had sent a letter dated 2-3-95 to the Managers of certain branches of the Respondent/Bank informing that as per the advice given by NABARD in the meeting held on 10-1-95 at Madras, the Board of Management of Respondent/Bank has also resolved to discontinue the Nitham Valar Nithi Scheme in the branches, where the outstanding is less than Rs. 5,00,000/- as on 31-1-95 and advise the branch not to open any fresh Nitham Valar Nithi account from 1-4-95 and to continue the existing Nitham Valar Nithi accounts in the maturity/closure of period/accounts. The xerox copy of that letter sent to the Manager of Koomapati branch of Pandyan Grama Bank is Ex W6 as it is sent to Keelapongudi Branch. In pursuance of the same, the Manager of the said branch of the Respondent/Bank, informed the Petitioner, a collecting agent under Nitham Valar Nithi Scheme not to open new accounts and there by the Petitioner was not given work by the Respondent/Bank. This non-employment of the Petitioner has been mentioned by the petitioner in his Claim Statement as termination of his service indirectly without giving reasons and it is arbitrary and unreasonable. It is the contention of the Respondent/Management in their Counter Statement that during state level review committee meeting convened by NABARD on 10-1-95 at Madras, the matter was discussed and the Management of the Respondent/Bank was advised to review the cost factor in continuing Nitham Valar Nithi Scheme and Subsequently NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme with the Bank as discussed at the State level Review Committee meeting and Board of Directors of the Bank made review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs. 5 Lakhs and accordingly, the Board of Directors decided to discontinue the scheme in the branches, where the Nitham Valar Nithi deposits outstanding is less than Rs. 5 lakhs. It is further contended in the Counter Statement that the Respondent/Bank is a public sector bank, which continues to incur heavy loss and that when the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches and that when the scheme is withdrawn, naturally the agent engaged purely on temporary and commission basis ceased to be engaged further and that was done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. Hence, it cannot be considered arbitrary, and in violation of the rights of the Petitioner. It is admitted that because of the decision taken by the Board of Directors of the Respondent/Bank Management Nitham Valar Nithi Scheme has been discontinued by the Respondent Management when found that Nitham Valar Nithi deposit outstanding was less than Rs. 5 lakhs and that scheme is not economically viable in those branches and in pursuance of the stoppage of the nature, the Petitioners who were engaged as Nitham Valar Nithi deposit collection agents were non-employed by the Respondent Bank. It is the contention of the Petitioner that it amounts to termination of service and hence the action of the Respondent/Management in terminating the services of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice and also a violation of principles of natural justice and also a violation of Section 25F of Industrial Disputes Act. It is further contended that the Division

Bench of High Court of Madras has held in a batch of Writ Appeal that *the tiny deposit agent is a workman as defined in Section 2 (s) of the Industrial Disputes Act and he is not an independent contractor but part of the organisation*. The Respondent would contend that Andhra Pradesh High Court in a decision reported in Vo 93 (1998) FJR 144 has held that tiny deposit agents (Nitham Valar Nithi agents) in bank are not workmen and as per the agency agreement, the bank shall also at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice as there is no provision in the agreement to pay compensation and to give notice to the Nitham Valar Nithi agent prior to the termination. There is no violation of section 25F of Industrial Disputes Act and that Nitham Valar Nithi agents are not workmen and the Petitioner cannot complain about the violation of Section 25F and other provisions of Industrial Disputes Act, 1947 since the action of the bank is valid. The question whether the tiny deposit collector for a bank as Nitham Valar Nithi agent is a workman or not has been decided by the Hon'ble Supreme Court in a case reported as (2001) 3 SCC pg 36 **Indian Bank Association vs. Workmen Syndicate Bank**. In that case the Hon'ble Supreme Court has held that *'these deposit collectors are workmen within the meaning of section 2(s) of Industrial Dispute Act, 1947 and that as seen from Section 2(rr) of the Industrial Disputes Act the commission received by the deposit collectors is nothing else but wage which is dependent on the productivity. This commission is paid for promoting the business of the various banks and that there is clearly a relationship of master and servant between the management and the deposit collectors*. So from this recent decision of the Hon'ble Supreme Court a quietus has been given to this whether the tiny deposit collector or Nitham Valar Nithi agent is a workman or not. The learned counsel for the Respondent also has fairly conceded that in view of this decision of the Supreme Court, the petitioner can be considered as a workman under Industrial Disputes Act.

8 In this industrial dispute the Petitioner has questioned the action of the management of Pandyan Grama Bank in terminating his employment as Nitham Valar Nithi agent as unjustified for the reason that the Respondent/Management has not issued any prior notice of termination, notice pay or compensation which is a violation under section 25F of the Industrial Dispute Act. In the Claim Statement the Petitioner has further asked for the relief that this Hon'ble Court may be pleased to set aside the order dated 2-3-95 and to direct the Respondent to reinstate the Petitioner into service with back wages continuity of service and all other attendant benefits. In the above cited case, the Supreme Court has held that *the persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work and that the mode of selection and qualification are not comparable to those of employees even though the employees may be doing similar work*. In the present case, not only on the mode of selection and qualification not comparable, but even the work is comparable. The work which deposit collectors do is completely different from the work which the regular employees do. There was, thus, no question of absorption and there was also no question of the deposit collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the banks. So, in view of this decision of the Supreme Court, the Petitioner cannot claim to be reinstated in service of the

Respondent/Bank. Further in view of the discontinuation of Nitham Valar Nithi Scheme in the branch where it was found to be economically not viable by the Board of Directors of the Respondent/Bank, the post of Nitham Valar Nithi collection agents will not be available for the Petitioner to reinstate in service as Nitham Valar Nithi collection agent.

9 The Petitioner has requested this Court to pass an order to set aside the order dated 2-3-95 of the Respondent/Management like the order E\ W6 sent to the Manager of Keelapoongudi branch. A perusal of this letter by Chairman to the Manager of Pandyan Grama Bank regarding stoppage of opening of any fresh Nitham Valar Nithi accounts from 1-4-95 in certain branches of the bank was a decision taken by Board of Directors of the Respondent/Bank after reviewing the position of economic viability in continuing the scheme any further where the amount outstanding under the scheme is less than Rs 5 lakhs in certain branches. MW1 has also spoken to that effect in his evidence. No contra evidence has been let in by the Petitioner to arrive at a conclusion that the decision taken by the Board of Directors after the discussion at the State level review committee meeting of the bank in respect of the function of Nitham Valar Nithi Scheme in the bank branches is wrong or incorrect. It is not disputed that the Respondent/Bank is a public sector bank and when the Respondent/Bank found this Nitham Valar Nithi Scheme as not economically viable by considering the cost of affectiveness of the scheme, it can take a decision to discontinue the same in the branches where the amount outstanding under the scheme is less than Rs 5 lakhs. This action of the Respondent/Bank Management has been taken only in respect of the bank branches where it was found not economically viable to continue the scheme. So under such circumstances, the decision taken by the Respondent/Management and in pursuance of the same a circular has been issued under E\ W6 cannot said to be an incorrect and unjustifiable decision taken by the Respondent/Management. So the question of setting aside the order dated 2-3-95 like E\ W6 does not at all arise.

10 In view of the earlier discussions on the basis of the decision of the Supreme Court above cited, the Petitioner can be considered as a workman under provisions of the Industrial Disputes Act, so far as his engagement as tiny deposit collection agent under Nitham Valar Nithi Scheme for the bank branch. That being the position, the non-employment of the Petitioner without any prior notice and compensation can be considered as a violation of Section 25F of the Industrial Disputes Act, 1947 as it is contended by learned counsel for the Petitioner. In the Counter Statement also, it is the contention of the Respondent/Management that as per the Andhra Pradesh High Court decision at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. Under such circumstances, it can be held that the Petitioner as Nitham Valar Nithi agent has been non-employed because of the stoppage of the scheme in the bank branch on the decision taken by the Respondent/Management is entitled to get retrenchment compensation, as it is held by the Hon'ble Supreme Court in a case reported as AIR 1980 SC 1219 BETWEEN SANTOSH GUPTA AND STATE BANK OF PATIALA. In that case, the Hon'ble Supreme Court has held that *compensation shall be payable to workman, in case of closure of undertaking as if, the workman had been retrenched, as it is provided under section 25 (fff) of Industrial disputes Act, 1947*. It is further observed by the Hon'ble Supreme Court that *the*

manifest object of these provisions is to so compensate the workman for loss of employment as to provide him the where with all to subsist until he finds fresh employment ' This decision of the Hon'ble Supreme Court is quite applicable to the present facts of this case. Under such circumstances, it can be concluded that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner as Nitham Valar Nithi Collection Agent is justified but the Petitioner is entitled for retrenchment compensation under Section 25F of Industrial Disputes Act, 1947. Thus, the point is answered accordingly.

11 In the result, an Award is passed holding that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner Sri S. Raman as Nitham Valar Nithi Collection Agent is justified. The Respondent/Management is directed to pay the Petitioner/Workman as retrenchment compensation, the amount equivalent to the amount he has earned as his commission for the period of one year immediately preceding to his non-employment. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28th March, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witnesses examined in common for this case and the connected cases :

For the I Party/Workman WW1 Sri T. Nelson
WW2 Sri A. Guruviah
WW3 Sri A. Soundarajan
WW4 Sri A. Senthilvel
WW5 Sri T. Chellan
WW6 Sri M. Abdul Rajak
WW7 Sri S. Jayamalai Perumal
WW8 Sri Subburaj
WW9 Sri A. L. Ramu
WW10 Sri S. Raman

For the II Party/Management MW1 Sri S. Sangilipandi

Documents marked as Exhibits in common for this case and other connected cases :

For the I Party/Workman :

Ex. No.	Date	Description
W1	02-03-84	Xerox copy of the appointment letter issued to Sri A. Guruviah
W2	Nil	Xerox copy of the identity card of Mr R. Sankara Narayana Moorthy issued by the Respondent
W3	Nil	Xerox copy of the S B passbook of Sri G. Subburaj
W4	21-06-85	Original agreement between Sri T. Nelson, workman and Respondent/Management
W5	Nil	Xerox copy of the Nitham Valar Nithi Scheme
W6	02-03-95	Xerox copy of the letter of the Chairman to the Manager, Pandyan Grama Bank regarding stoppage of opening of any fresh non-deposit account from 1-4-95 in certain branches

W7	26-06-99	Xerox copy of the circular issued by the Chairman of Bank regarding profits accrued
----	----------	---

For the II Party/Management :

Ex. No.	Date	Description
M1	31-01-95	Xerox copy of the daily collection list
M2	01-02-95	Xerox copy of the sundry creditor cash voucher
M3	01-11-95 to 07-11-95	Xerox copy of the weekly consolidation register
M4	Nil	Xerox copy of the NVN A/c No. 356 ledger extract
M5	27-12-91	Xerox copy of the credit transfer voucher NVN A/c
M6	27-12-91	Xerox copy of the debit cash voucher NVN A/c 92
M7	27-12-91	Xerox copy of the NVN discharged receipt voucher
M8	27-12-91	Xerox copy of the requisition letter for closure of NVN Account No. 92
M9	18-02-91	Xerox copy of the NVN specimen card No. 92
M10	18-12-91	Xerox copy of the credit voucher for demand loan
M11	18-12-91	Xerox copy of the debit cash voucher NVN Account
M12	18-12-91	Xerox copy of the NVN discharged receipt
M13	15-12-90	Xerox copy of the NVN Specimen card
M14	03-12-93	Xerox copy of the NVN agent S B A/c No. 2149
M15	Nil	Xerox copy of the guidelines for NVN scheme
M16	Nil	Xerox copy of the rules regarding NVN Scheme
M17	Nil	Xerox copy of the model of NVN agency agreement
M18	Nil	Xerox copy of the letter of the Chairman to all Branches to discontinue NVN deposits with list of branches
M19	27-04-93	Xerox copy of the NVN cash receipt
M20	Nil	Xerox copy of the NVN A/c No. 607 and 615 ledger copy
M21	Nil	Xerox copy of the ledger copy of Mr Nelson's S B Account No. 40
M22	22-02-95 to 02-03-95	Xerox copy of the weekly consolidation register
M23	Nil	Extract of S B account pertaining to Mr T. Nelson

नई दिल्ली, 5 अप्रैल, 2002

का.आ. 1409.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पांडेयन ग्रामा बैंक के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/लेबर कोर्ट, चेन्नई के पंचाट (संदर्भ संख्या आई. डी. नं 468/2001) को प्रकटित करती है, जो केन्द्रीय सरकार को 04-04-2002 को प्राप्त हुआ था।

[सं. एल-12012/74/97-आई आर.(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 5th April, 2002

S.O. 1409.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref No ID No 468/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Pandyan Grama Bank and their workman, which was received by the Central Government on 04-04-2002

[No L 12012/74/97-IR/(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 28th March, 2002

Present K KARTHIKEYAN,
Presiding Officer

INDUSTRIAL DISPUTE NO. 468/2001

(Tamil Nadu State Industrial Tribunal I D No 10/98)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the workman Sri M Abdul Rajak and the Management of Pandyan Grama Bank, Virudhunagar)

BETWEEN

Sri M Abdul Rajak I Party/Workman

AND

The Chairman,
Pandyan Grama Bank,
Virudhunagar II Party/Management

Appearance:

For the Workman M/s PVS Girdhar
Dev Shanker &
R Srinivasan,
Advocates

For the Management M/s Row & Reddy,
S Vaidyanathan &
WT Prabakar
Advocates

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and Sub-section 2 (A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned Dispute for adjudication vide Order No L-12012/74/97-IR/(B-I) dated 02-01-98

2 This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, Chennai where it was taken on file as I D No 10/98. When the matter was pending enquiry in that Tribunal, the Government of India, Ministry of Labour, was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication. On receipt of records from that Tamil Nadu State Industrial Tribunal, the case has been taken on file as I D No 468/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 1-3-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case by filing their Claim Statement and Counter Statement respectively.

3 When the matter came up before me for final hearing on 14-02-2002, upon perusing the Claim Statement, Counter Statement, the other material papers on record, the oral and documentary evidence let in on either side, and after hearing the arguments advanced by the learned counsel on either side, this matter having stood over till this date for consideration, this Tribunal has passed the following —

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt for adjudication by this Tribunal is as follows —

“Whether the action of the Management of Pandyan Grama Bank in terminating the employment of Sri M Abdul Rajak is justified. If not, what relief the concerned workman is entitled to?”

4 The averments in the Claim Statement of the I Party/Workman Sri M Abdul Rajak (hereinafter refers to as Petitioner) are briefly as follows —

The Petitioner was appointed as a commission agent in the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) as part of a scheme called Nitham Valar Nithi Scheme, by an order of appointment dated 02-07-1979. He was appointed as collection agent on prior approval of the Head Office by signing an agreement with the Respondent/Bank. He had furnished a security deposit of Rs 1000/- He was paid commission on the collection made by him at the rate of 3%. He should remit the entire collection made on the previous day into the bank before the banking hours on the next day. If he fails to do so, he will lose 50% of the commission on the amount collected and in case of default exceeding one day, he will lose the entire commission. The workman is taken to task, when any depositor closes the account within a period of six months to twenty four months from the date of opening of the said account. There will be a reduction of the commission payable to the agent in that event. For all acts of commission and omission of the nominee, the collection agent will be responsible and answerable to the bank. The Respondent has issued a

letter to the Manager dated 2-3-95 not allowing to open new accounts, if the deposit on the head of 'NVN' account is less than five lakhs. Thus, the number of accounts dwindled with consequent decrease in the earning of the deposit collectors. As such, the Respondents have failed to give work to the Petitioner. Hence, this action of the Respondent in terminating the service of the Petitioner indirectly without giving reasons is arbitrary and unreasonable. The Petitioner filed a petition before the Assistant Labour Commissioner on conciliation seeking to reinstate the Petitioner with back wages and continuity of service. On failure of conciliation efforts taken by the Assistant Labour Commissioner, he submitted a failure of conciliation report to the Government, which in turn referred this matter as an industrial dispute for adjudication by this Tribunal. The impugned order is arbitrary and unreasonable and violative of the Petitioner's rights under Article 14, 16 and 21 of the Constitution. The Division Bench of High Court Madras, in a batch of appeals has held that there is sufficient control over the work of Tiny Deposit Agents by the bank, that the Tiny Deposit Agent is a workman as defined in section 2(2) of the Industrial Disputes Act and that such a Tiny Deposit Agent is not an independent contractor but part of the organisation. Though in the letter of appointment issued by the bank to the Petitioner, commission was fixed payable to the Petitioner at 3% on the total collection made by the Petitioner each month, clause 16 of the agreement provided that the commission could be determined by the bank time to time. As per rule of the scheme, opening of the account should be done only after the supervisory official authorises the same, though the collecting agent is permitted to receive deposits from door to door. This is an important circumstance which shows that the collecting agent is not an independent contractor so as to enrol customers of the bank on his own. The Tiny Deposit Agent is undoubtedly engaged in the business of the bank i.e. the deposit mobilisation. The remuneration of the Tiny Deposit Agent is fixed in the agreement. Though it is called commission, it will still be remuneration as defined by the decisions of the Supreme Court as well as the definition of the wages in the Industrial Disputes Act. The nature of work of the Petitioner demands daily attendance in bank and deposit of the collections made by him on the previous day. The Petitioner has to do some clerical work as he is bound to fill up relevant forms, ledgers, pass books, etc. The Petitioner should furnish a security deposit of Rs. 1000/- which will be placed in fixed deposit for a minimum period of three years. The bank can instruct the agent not to enrol new subscribers at any time. The provision enabling the agent to terminate the agency on giving the bank a month's notice is the circumstances, which goes to show that it is a contract of service. The impugned order of the Respondent does not allow the workmen to open a fresh account under 'NVN' scheme and thereby terminated the services of the Petitioner. The action of the Respondent in terminating the service of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice. The action of the Respondent in terminating the service of the Petitioner is violative of Chapter VA and Chapter VB particularly section 25F of the Industrial Disputes Act. No notice has been served prior to the issuance of the said order, nor was retrenchment compensation paid. The Govt. Ministry of Finance issued a directive not to wind up the said scheme. Many of the nationalised banks which were virtually winding up the said scheme restored it. Therefore, it is prayed that this

Hon'ble Court may be pleased to set aside the impugned order dated 2-3-95 and direct the Respondent to reinstate the Petitioner in service with back wages, continuity of service and all other attendant benefits.

5 The averments in the Counter Statement filed by the II Party/Management Pandyan Grama P. S. (hereinafter refers to as Respondent) are briefly as follows :—

The Petitioner was engaged as Nitham Valar Nithi Scheme agent from 02-07-1979. Unlike the regular employees of the bank, he was not paid salary. He was paid only commission depending upon the amount of deposit collected. Unlike the regular bank employees he was not required to attend the bank daily or sign the attendance register. He was not required to attend to any other work in the bank. His work consisted in collecting tiny deposits and deposit them into the bank the next day. He may not be doing collection work not more than twice a week. He is governed by the Agency agreement. Unlike other employees, he was not subject to the disciplinary control of the bank and there are no fixed hours of work. The Nitham Valar Nithi Scheme was in operation in the Respondent/Bank since 1979. During State Level Review Committee meeting convened by NABARD on 10-01-95 at Madras, this matter was discussed and the Respondent was advised to review the cost factor in continuing Nitham Valar Nithi Scheme. Subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme in the bank as discussed at the State Level Review Committee meeting. On that basis, the Board of Directors of the bank made a review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs. 5,00,000/-. Accordingly, the bank during the Board of Directors' meeting held in February, 1995 decided to discontinue the scheme at the branches, where Nitham Valar Nithi Scheme deposit outstanding was less than Rs. 5 lakhs. When this was implemented, the outstanding under Nitham Valar Nithi Scheme in Puliyal branch was less than Rs. 5 lakhs. Moreover, the agency agreement entered into between the bank and the Petitioner clearly states that the bank shall also be at liberty to terminate the agency any time without assigning any reason whatsoever. The Respondent/Bank is a public sector bank which continues to incur heavy loss. When the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches. When the scheme is withdrawn naturally the agent engaged purely on temporary and commission basis ceased to be engaged further. This has been done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. This by no stretch of imagination can be considered unreasonable, arbitrary and violative of rights of the Petitioner. NVN rules provide that the depositor may open the account through the collection agent authorised by the bank in this behalf. Thus, it is clear that the Nitham Valar Nithi agent is free to open an Nitham Valar Nithi account on his own. The Nitham Valar Nithi agents were not the employees of the bank as their relationship with the bank was only that of contract for service and not contract of service. Nitham Valar Nithi agents need not comply with the minimum conditions stipulated for recruitment as employees of the bank such as age, qualification etc. They were engaged purely on commission.

basis. Even though, he attended collection work in a day, but no collection is effected he would not be paid commission for that day. So, the commission cannot be treated as wages. Quite recently, the Andhra Pradesh High Court has held in a case that tiny deposit collectors/Nitham Valar Nithi agents in bank are not workmen. The Nitham Valar Nithi agents come to the branch only when they have to remit the amount they collected towards Nitham Valar Nithi Scheme. He has to fill up only specific forms such as list of accounts in which he had made collection and enter the amount collected in the pass book. Though Nitham Valar Nithi agents were authorised to enter in the passbook, it is not authoritative and it is subject to verification by the bank with the Nitham Valar Nithi ledger. Nitham Valar Nithi agent was not required to attend any other work in the bank. Nitham Valar Nithi agents are not workmen, even assuming so they cannot complain about violation of Section 25F and other provisions of the Industrial Disputes Act, 1947 as the action of the bank is valid as per section 2(oo) 2(bb) of the Industrial Disputes Act, 1947. The Petitioner has signed the agreement wherein stipulation No. 5 of the agency agreement states that the bank shall also be at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice. There is no provision in agency agreement saying that notice should be issued to Nitham Valar Nithi agents prior to their termination and also there is no provision in the agreement to pay compensation. Hence, there is no violation of section 25F of the Industrial Disputes Act, 1947. In any event, he cannot claim reinstatement because there was no post of Nitham Valar Nithi agent. It was only an agency between the Petitioner and the bank and the scheme came to be abolished as far as Puliyal branch is concerned. That is why the Andhra Pradesh High Court has held at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. For all the reasons mentioned it is prayed that this Hon'ble Tribunal may be pleased to pass an award rejecting the claim of the Petitioner with cost.

6. When the matter was taken up finally for enquiry, the learned counsel appearing on either side represented that a joint trial can be held for this case along with the other similar cases 13 in number. The evidence let in on either side both oral and documentary can be treated as a common evidence in all these 14 cases. As per their request a joint trial has been conducted and evidence recorded in these cases along with other cases have been treated as common evidence on either side. Out of the fourteen petitioners of these fourteen cases, ten have been examined as WW1 to WW10 and on the side of the management one common witness has been examined as MW1. For the Petitioner/Workmen seven documents have been marked as Ex. W1 to W7 and for the management twenty three documents have been marked as Ex. M1 to M23 as common documentary evidence in all these cases. The arguments advanced by the learned counsel on either side was heard.

7. The Point for my consideration is—

‘Whether the action of the Management of Pandyan Grama Bank in terminating the employment of Sri M. Abdul Rajak is justified? If not, what relief the concerned workman is entitled to?’

Point —

The Petitioner Sri M. Abdul Rajak has been employed by the management Pandyan Grama Bank as an agent for collecting amounts from the depositors towards Nitham Valar Nithi, a deposit Scheme introduced by the Respondent/Bank. For that the Petitioner had entered into an agreement with the Respondent/Bank. The Petitioner, as an agent for collecting amount as tiny deposits from the depositors under the said scheme, has to deposit the collected amount into the bank next day. The Petitioner was engaged as such by the Respondent/Bank on commission basis. It is the admission of the Petitioner that he was paid commission on the collection made by him at the rate of 3%. The xerox copy of the S.B. passbook of the Petitioner wherein the payment of his commission has been credited, the Petitioner was engaged for the Puliyal branch of the Respondent/Bank as a collection agent for tiny deposits under Nitham Valar Nithi Scheme. The Respondent/Management had sent a letter dated 2-3-95 to the Managers of certain branches of the Respondent/Bank informing that as per the advice given by NABARD in the meeting held on 10-1-95 at Madras, the Board of Management of Respondent/Bank has also resolved to discontinue Nitham Valar Nithi Scheme in the branches, where the outstanding is less than Rs. 5,00,000/- as on 31-1-95 and advise the branch not to open any fresh Nitham Valar Nithi account from 1-4-95 and to continue the existing Nitham Valar Nithi accounts in the maturity/closure of period/ accounts. The xerox copy of that letter sent to the Manager of Koomapatti branch of Pandyan Grama Bank is Ex. W6 as it is sent to Puliyal branch. In pursuance of the same, the Manager of the said branch of the Respondent/Bank informed the Petitioner, a collecting agent under Nitham Valar Nithi Scheme not to open new accounts and thereby the Petitioner was not given work by the Respondent/Bank. This non-employment of the Petitioner has been mentioned by the Petitioner in his Claim Statement as termination of his service indirectly without giving reasons and it is arbitrary and unreasonable. It is the contention of the Respondent/Management in their Counter Statement that during state level review committee meeting convened by NABARD on 10-1-95 at Madras, the matter was discussed and the management of the Respondent/Bank was advised to review the cost factor in continuing Nitham Valar Nithi Scheme and subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme with the bank as discussed at the State level Review Committee meeting and Board of Directors of the bank made review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs. 5 lakhs and accordingly the Board of Directors decided to discontinue the scheme in the branches, where the Nitham Valar Nithi deposits outstanding is less than Rs. 5 lakhs. It is further contended in the Counter Statement that the Respondent/Bank is a public sector bank, which continues to incur heavy loss and that when the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches and that when the scheme is withdrawn, naturally the agents engaged purely on temporary and commission basis ceased to be engaged further and that was done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the

time of engaging the Petitioner Hence, it cannot be considered as unreasonable, arbitrary, and in violation of the rights of the Petitioner It is admitted that because of the decision taken by the Board of Directors of the Respondent/Bank Management Nitham Valar Nithu Scheme has been discontinued by the Respondent/Management when found that the Nitham Valar Nithu deposit outstanding was less than Rs 5 lakh and that scheme is not economically viable in those branches and in pursuance of the stoppage of the scheme, the Petitioners who were engaged as Nitham Valar Nithu deposit collection agents were non-employed by the Respondent/Bank It is the contention of the Petitioner that it amounts to termination of service and hence the action of the respondent/Management in terminating the services of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice and also a violation of Section 25F of Industrial Disputes Act It is further contended that the Division Bench of High Court of Madras has held in a batch of Writ Appeal that *the tiny deposit agent is a workman as defined in Section 2(s) of the Industrial Disputes Act and he is not an independent contractor but part of the organisations* The Respondent would contend that Andhra Pradesh High Court in a decision reported in Vol 93 (1998) FJR 144 has held that tiny deposit agents (Nitham Valar Nithu agents) in bank are not workmen and as per the agency agreement, the bank shall also at liberty to terminate the agency at any time without assigning any reason whatsoever Hence, there is no violation of natural justice as there is no provision in the agreement to pay compensation and to give notice to the Nitham Valar Nithu agent prior to the termination There is no violation of section 25F of Industrial Disputes Act and that Nitham Valar Nithu agents are not workmen and the Petitioner cannot complain about the violation of Section 25F and other provisions of Industrial Disputes Act, 1947, since the action of the bank is valid The question whether the tiny deposit collector for a bank as Nitham Valar Nithu agent is a workman or not has been decided by the Hon'ble Supreme Court in a case reported as (2001) 3 SCC pg 36 INDIAN BANK ASSOCIATION VS WORKMEN SYNDICATE BANK In that case the Hon'ble Supreme Court has held that *'these deposit collectors are workmen within the meaning of section 2(s) of Industrial Disputes Act, 1947 and that as seen from Section 2(rr) of the Industrial Disputes Act, the commission received by the deposit collectors is nothing else but wage which is dependent on the productivity This commission is paid for promoting the business of the various banks and that there is clearly a relationship of master and servant between the management and the deposit collectors'* So from this recent decision of the Hon'ble Supreme Court a quietus has been given to the issue whether the tiny deposit collector or Nitham Valar Nithu agent is a workman or not The learned counsel for the Respondent also has fairly conceded that in view of this decision of the Supreme Court, the Petitioner can be considered as workman under Industrial Disputes Act

8 In this industrial dispute the Petitioner has questioned the action of the management of Pandyan Grama Bank in terminating his employment as Nitham Valar Nithu agent as unjustified for the reason that the Respondent/Management has not issued any prior notice of termination, notice pay or compensation which is a violation under section 25F of the Industrial disputes Act In the Claim Statement the Petitioner has further asked for

the relief that this Hon'ble Court may be pleased to set aside the order dated 2-3-95 and to direct the Respondent to reinstate the Petitioner into service with back wages, continuity of service and all other attendant benefits In the above cited case, the Supreme Court has held that *the persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work and that the mode of selection and qualification are not comparable to those of employees even though the employees may be doing similar work* In the present case not only on the mode of selection and qualification not comparable, but even the work is comparable The work which deposit collectors do is completely different from the work which the regular employees do There was, thus, no question of absorption and there was also no question of the deposit collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the banks So, in view of this decision of the Supreme Court, the Petitioner cannot claim to be reinstated in service of the Respondent/Bank Further, in view of the discontinuation of Nitham Valar Nithu Scheme in the branch where it was found to be economically not viable by the Board of Directors of the Respondent/Bank, the post of Nitham Valar Nithu collection agents will not be available for the Petitioner to reinstate in service as Nitham Valar Nithu collection agent

9 The Petitioner has requested this Court to pass an order to set aside the order dated 2-3-95 of the Respondent/Management like the order E\ W6 sent to the Manager of Puliyal branch A perusal of this letter by Chairman to the Manager of Pandyan Grama Bank regarding stoppage of opening of any fresh Nitham Valar Nithu accounts from 1-4-95 in certain branches of the bank was decision taken by Board of Directors of the Respondent/Bank after reviewing the position of economic viability in continuing the scheme any further, where the amount outstanding under the scheme is less than Rs 5 lakhs in certain branches MW1 has also spoken to that effect in his evidence No contra evidence has been let in by the Petitioner to arrive at a conclusion that the decision taken by the Board of Directors after the discussion at the State level review committee meeting of the bank in respect of the function of Nitham Valar Nithu Scheme in the bank branches in wrong or incorrect It is not disputed that the Respondent/Bank is a public sector bank and when the Respondent/Bank found this Nitham Valar Nithu Scheme as not economically viable by considering the cost of effectiveness of the scheme, it can take a decision to discontinue the same in the branches where the amount outstanding under the scheme is less than Rs 5 lakhs This action of the Respondent/Bank Management has been taken only in respect of the bank branches where it was found not economically viable to continue the scheme. So under such circumstances, the decision taken by the Respondent/Management and in pursuance of the same a circular has been issued under E\ W6 cannot said to be an incorrect and unjustifiable decision taken by the Respondent/Management So, the question of setting aside the order dated 2-3-95 like E\ W6 does not at all arise

10 In view of the earlier discussions on the basis of the decision of the Supreme Court above cited, the Petitioner can be considered as a workman under provisions of the Industrial Disputes Act so far as his engagement as tiny deposit collection agent under Nitham Valar Nithu

Scheme for the bank branch That being the position, the non-employment of the Petitioner without any prior notice and compensation can be considered as a violation of Section 25F of the Industrial Disputes Act, 1947 as it is contended by learned counsel for the Petitioner In the Counter Statement also, it is the contention of the Respondent/Management that as per the Andhra Pradesh High Court decision at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement Under such circumstances, it can be held that the Petitioner as Nitham Valar Nithi agent has been non-employed because of the stoppage of the scheme in the bank branch on the decision taken by the Respondent/Management is entitled to get retrenchment compensation, as it is held by the Hon'ble Supreme Court in a case reported as AIR 1980 SC 1219 BETWEEN SANTOSH GUPTA AND STATE BANK OF PATIALA In that case, the Hon'ble Supreme Court has held that 'compensation shall be payable to workman, in case of closure of undertaking as if, the workman had been retrenched, as it is provided under section 25 (fff) of Industrial Disputes Act, 1947 It is further observed by the Hon'ble Supreme Court that the manifest object of these provisions is to so compensate the workman for loss of employment as to provide him the where with all to subsist until he finds fresh employment ' This decision of the Hon'ble Supreme Court is quite applicable to the present facts of this case Under such circumstances, it can be concluded that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner as Nitham Valar Nithi Collection Agent is justified, but the Petitioner is entitled for retrenchment compensation under section 25F of Industrial Disputes Act, 1947 Thus, the point is answered accordingly

11 In the result, an Award is passed holding that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner Sri M Abdul Rajak as Nitham Valar Nithi Collection Agent is justified The Respondent/Management is directed to pay the Petitioner/Workman as retrenchment compensation, the amount equivalent to the amount he has earned as his commission for the period of one year immediately preceding to his non employment No Cost

(Dictated to the Stenographer, transcribed and typed by him corrected and pronounced by me in the open court on this day the 28th March, 2002)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined in common for this case and the connected cases :—

For the I Party/Workman WW Sri T Nelson

WW2 Sri A Guruviah

WW3 Sri A Soundarajan

WW4 Sri A Senthilvel

WW5 Sri T Chellan

WW6 Sri M Abdul Rajak

WW7 Sri S Jayamalai Perumal

WW8 Sri Subburaj

WW9 Sri A L Ramu

WW10 Sri S Raman

For the II Party/Management MWI Sri S Sangilipandi

Documents marked as Exhibits in common for this case and other connected cases :—

For the I Party/Workman :—

Ex. No.	Date	Description
W1	02-03-84	Xerox copy of the appointment letter issued to Sri A Guruviah
W2	Nil	Xerox copy of the identity card of Mr R Sankara Naravana Moorthy issued by the Respondent
W3	Nil	Xerox copy of the S B passbook of Sri G Subburaj
W4	21-06-85	Original agreement between Sri T. Nelson, workman and Respondent/Management
W5	Nil	Xerox copy of the Nitham Valar Nithi Scheme
W6	02-03-95	Xerox copy of the letter of the Chairman to the Manager, Pandyan Grama Bank regarding stop-page of Opening of any fresh non-deposit account from 1-4-95 in certain branches
W7	26-06-99	Xerox copy of the circular issued by the Chairman of Bank regarding profits accrued

For the II Party/Management :—

Ex. No.	Date	Description
M1	31-01-95	Xerox copy of the daily collection list
M2	01-02-95	Xerox copy of the sundry creditor cash voucher
M3	01-11-95 to 07-11-95	Xerox copy of the weekly consolidation register
M4	Nil	Xerox copy of the NVN a/c No 356 ledger extract
M5	27-12-91	Xerox copy of the credit transfer voucher NVN A/c
M6	27-12-91	Xerox copy of the debit cash voucher NVN a/c 92
M7	27-12-91	Xerox copy of the NVN discharged receipt voucher
M8	27-12-91	Xerox copy of the requisition letter for closure of NVN account No 92
M9	18-02-91	Xerox copy of the NVN specimen card No 92
M10	18-12-91	Xerox copy of the credit voucher for demand loan
M11	18-12-91	Xerox copy of the debit cash voucher NVN Account
M12	18-12-91	Xerox copy of the NVN discharged receipt

M13	15-12-90	Xerox copy of the NVN Specimen card
M14	03-12-93	Xerox copy of the NVN agent S B A/c No 2149
M15	Nil	Xerox copy of the guidelines for NVN scheme
M16	Nil	Xerox copy of the rules regarding NVN Scheme
M17	Nil	Xerox copy of the model of NVN agency agreement
M18	Nil	Xerox copy of the letter of the Chairman to all Branches To discontinue NVN deposits with list of branches
M19	27-04-93	Xerox copy of the NVN cash receipt
M20	Nil	Xerox copy of the NVN a/c No 607 and 615 ledger copy
M21	Nil	Xerox copy of the ledger copy of Mr Nelson's S B Account No 40
M22	22-02-95 to 02-03-95	Xerox copy of the weekly consolidation register
M23	Nil	Extract of S B account pertaining to Mr T Nelson

नई दिल्ली, 5 अप्रैल, 2002

का.आ. 1410.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पांडेयन ग्रामा बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/लेबर कोर्ट, चेन्नई के पंचाट (संदर्भ संख्या आई. डी. नं 440/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-04-02 को प्राप्त हुआ था।

[सं. एल-12012/100/96-आई.आर.(बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 5th April, 2002

S.O. 1410.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref No ID No 440/2001) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Pandyan Grama Bank and their workman, which was received by the Central Government on 04-04-2002

[No L 12012/100/96-IR/(B-1)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 28th March, 2002

Present K KARTHIKEYAN,
Presiding Officer

INDUSTRIAL DISPUTE NO. 440/2001

(Tamil Nadu State Industrial Tribunal I D No 74/97)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the workman Sri T Nelson and the Management of Pandyan Grama Bank, Virudhunagar)

BETWEEN

Sri T Nelson

I Party/Workman

AND

The Chairman,
Pandyan Grama Bank,
Virudhunagar

II Party/Management

Appearance:

For the Workman

M/s PVS Girdhar
Dev Shanker &
R Srinivasan,
Advocates

For the Management

M/s Row & Reddy,
S Vaidhyathan &
W T Prabakar,
Advocates

The Govt. of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No L-12012/100/96-IR/(B-I) dated 'nil'

2 This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, Chennai where it was taken on file as I D No 74/97 When the matter was pending enquiry in that Tribunal, the Government of India, Ministry of Labour, was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication On receipt of records from that Tamil Nadu State Industrial Tribunal, the case has been taken on file as I D No 440/2001 and notices were sent to the counsel on record on either side, informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 27-2-2001 with their respective parties and to prosecute this case further Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case by filing their Claim Statement and Counter Statement respectively

3 When the matter came up before me for final hearing on 14-02-2002, upon perusing the Claim Statement, Counter Statement, the other material papers on record, the oral and documentary evidence let in on either side, and after hearing the arguments advanced by the learned counsel on either side, this matter having stood over till this date for consideration, this Tribunal has passed the following —

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt for adjudication by this Tribunal is as follows —

“Whether the action of the Management of Pandyan Grama Bank in terminating the employment of Sri T Nelson NVN is justified If not, what relief the concerned workman is entitled to”

4 The averments in the Claim Statement of the I Party/Workman Sri T Nelson (hereinafter refers to as Petitioner) are briefly as follows —

The Petitioner was appointed as a commission agent in the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) as part of a scheme called Nitham Valar Nithi Scheme, by an order of appointment dated 26-6-85. He was appointed as collection agent on prior approval of the Head Office by signing an agreement with the Respondent/Bank. He had furnished a security deposit of Rs 1000/- He was paid commission on the collection made by him at the rate of 3%. He should remit the entire collection made on the previous day into the bank before the banking hours on the next day. If he fails to do so, he will lose 50% of the commission on the amount collected and in case of default exceeding one day, he will lose the entire commission. The workman is taken to task, when any depositor closes the account within a period of six months to twenty-four months from the date of opening of the said account. There will be a reduction of the commission payable to the agent in that event. For all acts of commission and omission of the nominee, the collection agent will be responsible and answerable to the bank. The Respondent has issued a letter to the Manager dated 2-3-95 not allowing to open new accounts, if the deposit on the head of 'NVN' account is less than five lakhs. Thus the number of accounts dwindled with consequent decrease in the earning of the deposit collectors. As such, the Respondents have failed to give work to the Petitioner. Hence, this action of the Respondent in terminating the service of the Petitioner indirectly without giving reasons is arbitrary and unreasonable. The Petitioner filed a petition before the Assistant Labour Commissioner on conciliation seeking to reinstate the Petitioner with back wages and continuity of service. On failure of conciliation efforts taken by the Assistant Labour Commissioner, he submitted a failure of conciliation report to the Government, which in turn referred this matter as an industrial dispute for adjudication by this Tribunal. The impugned order is arbitrary and unreasonable and violative of the Petitioner's rights under Article 14, 16 and 21 of the Constitution. The Division Bench of High Court Madras, in a batch of appeals has held that there is sufficient control over the work of Tiny Deposit Agents by the bank that the Tiny Deposit Agent is a workman as defined in section 2(2) of the Industrial Disputes Act and that such a Tiny Deposit Agent is not an independent contractor but part of the organisation. Though in the letter of appointment issued by the bank to the Petitioner, commission was fixed payable to the Petitioner at 3% on the total collection made by the Petitioner each month, clause 16 of the agreement provided that the commission could be determined by the bank time to time. As per rule of the scheme, opening of the account should be done only after the supervisory official authorises the same, though the collecting agent is permitted to receive deposits from door to door. This is an important circumstance which shows that the collecting agent is not an independent contractor so as to enrol customers of the bank on his own. The Tiny Deposit Agent is undoubtedly engaged in the business of the bank i.e. the deposit mobilisation. The remuneration of the Tiny Deposit Agent is fixed in the agreement. Though it is called commission, it will still be remuneration as defined by the decisions of the Supreme Court as well as the definition of the wages in the Industrial Disputes Act. The nature of work of the Petitioner demands daily attendance

in bank and deposit of the collections made by him on the previous day. The Petitioner has to do some clerical work as he is bound to fill up relevant forms, ledgers, pass books, etc. The Petitioner should furnish a security deposit of Rs. 1000/- which will be placed in fixed deposit for a minimum period of three years. The bank can instruct the agent not to enroll new subscribers at any time. The provision enabling the agent to terminate the agency on giving the bank a month's notice is the circumstances, which goes to show that it is a contract of service. The impugned order of the Respondent does not allow the workmen to open a fresh account under 'NVN' scheme and thereby terminated the services of the Petitioner. The action of the Respondent in terminating the service of the Petitioner without being prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice. The action of the Respondent in terminating the service of the Petitioner is violative of Chapter VA and Chapter VB particularly section 25F of the Industrial Disputes Act. No notice has been served prior to the issuance of the said order, nor was retrenchment compensation paid. The Govt. Ministry of Finance issued a directive not to wind up the said scheme. Many of the nationalised banks which were virtually winding up the said scheme restored it. Therefore, it is prayed that this Hon'ble Court may be pleased to set aside the impugned order dated 2-3-95 and direct the Respondent to reinstate the Petitioner in service with back wages, continuity of service and all other attendant benefits.

5 The averments in the Counter Statement filed by the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) are briefly as follows —

The Petitioner was engaged as Nitham Valar Nithi Scheme agent from 1985. Unlike the regular employees of the bank, he was not paid salary. He was paid only commission depending upon the amount of deposit collected. Unlike the regular bank employees he was not required to attend the bank daily or sign the attendance register. He was not required to attend to any other work in the bank. His work consisted in collecting tiny deposits and deposit them into the bank the next day. He may not be doing collection work not more than twice a week. He is governed by the Agency agreement. Unlike other employees, he was not subject to the disciplinary control of the bank and there are no fixed hours of work. The Nitham Valar Nithi Scheme was in operation in the Respondent/Bank since 1979. During State Level Review Committee meeting convened by NABARD on 10-01-95 at Madras, this matter was discussed and the Respondent was advised to review the cost factor in continuing Nitham Valar Nithi Scheme. Subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme in the bank as discussed at the State Level Review Committee meeting. On that basis, the Board of Directors of the bank made a review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs 5,00,000/-. Accordingly, the bank during the Board of Directors' meeting held in February, 1995 decided to discontinue the scheme at the branches, where Nitham Valar Nithi Scheme deposit outstanding was less than Rs 5 lakhs. When this was implemented, the outstanding under Nitham Valar Nithi Scheme in Koodangur branch was less than Rs 5 lakhs. Moreover, the agency agreement

entered into between the bank and the Petitioner clearly states that the bank shall also be at liberty to terminate the agency any time without assigning any reason whatsoever. The Respondent/Bank is a public sector bank which continues to incur heavy loss. When the Nitham Valar Nithu Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches. When the scheme is withdrawn naturally the agent engaged purely on temporary and commission basis ceased to be engaged further. This has been done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithu agent at the time of engaged the Petitioner. This by no stretch of imagination can be considered unreasonable arbitrary and violative of rights of the Petitioner. NVN rules provides that the depositor may open the account through the collection agent authorised by the bank in this behalf. Thus, it is clear that the Nitham Valar Nithu agent is free to open an Nitham Valar Nithu account on his own. The Nitham Valar Nithu agents were not the employees of the bank as their relationship with the bank was only that of contract for service and not contract of service. Nitham Valar Nithu agents need not comply with the minimum conditions stipulated for recruitment as employees of the bank such as age, qualification etc. They were engaged purely on commission basis. Even though he attended collection work in a day, but no collection is effected he would not be paid commission for that day. So, the commission cannot be treated as wages. Quite recently, the Andhra Pradesh High Court has held in a case that tiny deposit collectors/ Nitham Valar Nithu agents in bank are not workmen. The Nitham Valar Nithu agents come to the branch only when they have to remit the amount they collected towards Nitham Valar Nithu Scheme. He has to fill up only specific forms such as list of accounts in which he had made collection and enter the amount collected in the pass book. Though Nitham Valar Nithu agents were authorised to enter in the pass book, it is not authoritative and it is subject to verification by the bank with the Nitham Valar Nithu ledger. Nitham Valar Nithu agents was not required to attend any other work in the bank. Nitham Valar Nithu agents are not workmen, even assuming so they cannot complain about violation of Section 25F and other provisions of the Industrial Disputes Act, 1947 as the action of the bank is valid as per section 2(a) 2(bb) of the Industrial Disputes Act, 1947. The Petitioner has signed the agreement wherein stipulation No. 5 of the agency agreement states that the bank shall also be at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice. There is no provision in agency agreement saying that notice should be issued to Nitham Valar Nithu agents prior to their termination and also there is no provision in the agreement to pay compensation. Hence, there is no violation of section 25F of the Industrial Disputes Act, 1947. In any event, he cannot claim reinstatement because there was no post of Nitham Valar Nithu agent. It was only an agency between the Petitioner and the bank and the scheme to be abolished as far as Koodangulam branch is concerned. That is why, the Andhra Pradesh High Court has held at the worst all Nitham Valar Nithu agents can be awarded compensation and not reinstatement. For all the reasons mentioned it is prayed that this Hon'ble Tribunal may be pleased to pass an award rejecting the claim of the Petitioner with cost.

6 When the matter was taken up finally for enquiry, the learned counsel appearing on either side represented that a joint trial can be held for this case along with the other similar cases, 13 in number. The evidence let in on either side both oral and documentary can be treated as a common evidence in all these 14 cases. As per their request, a joint trial has been conducted and evidence recorded in these cases alongwith other cases have been treated as common evidence on either side. Out of the fourteen petitioners of these fourteen cases, ten have been examined as WW1 to WW10 and on the side of the management one common witness has been examined as MW1. For the Petitioner/Workmen seven documents have been marked as E\ W1 to W7 and for the management twenty three documents have been marked as E\ M1 to M23 as common documentary evidence in all these cases. The arguments advanced by the learned counsel on either side was heard.

7 The Point for my consideration is—

“Whether the action of the Management of Pandyan Grama Bank in terminating the employment of Shri T. Nelson, NVN is justified? If not, what relief the concerned workmen is entitled to?”

Point —

The Petitioner Sri T. Nelson has been employed by the management Pandyan Grama Bank as an agent for collecting amounts from the depositors towards Nitham Valar Nithu, a deposit Scheme introduced by the Respondent/Bank. For that the Petitioner had entered into an agreement with the Respondent/Bank. The said agreement is E\ W4. The Petitioner as an agent for collecting amount as tiny deposits from the depositors under the said scheme, has to deposit the collected amount into the bank next day. The Petitioner was engaged as such by the Respondent/Bank on commission basis. It is the admission of the Petitioner that he was paid commission on the collection made by him at the rate of 3%. The Petitioner was engaged for the Koodangulam branch of the Respondent/Bank as a collection agent for tiny deposits under Nitham Valar Nithu Scheme. The Respondent/Management had sent a letter dated 2-3-95 to the Managers of certain branches of the Respondent/Bank informing that as per the advice given by NABARD in the meeting held on 10-1-95 at Madras the Board of Management of Respondent/Bank has also resolved to discontinue to Nitham Valar Nithu Scheme in the branches, where the outstanding is less than Rs. 5,00,000/- as on 31-1-95 and advice the branch not to open any fresh Nitham Valar Nithu account from 1-4-95 and to continue the existing Nitham Valar Nithu accounts in the maturity/closure of period/accounts. The xerox copy of that letter sent to the Manager of Koomapattu branch of Pandyan Grama Bank is E\ W6. In pursuance of the same, the Manager of the said branch of the Respondent/Bank, informed the Petitioner, a collecting agent under Nitham Valar Nithu Scheme not to open new accounts and thereby the Petitioner was not given work by the Respondent/Bank. This non-employment of the Petitioner has been mentioned by the Petitioner in his Claim Statement as termination of his service indirectly without giving reasons and it is arbitrary and unreasonable. It is the contention of the Respondent/Management in their Counter Statement that during state level review committee meeting convened by NABARD on 10-1-95 at

Madras, the matter was discussed and the management of the Respondent/Bank was advised to review the cost factor in continuing Nitham Valar Nithi Scheme and subsequently NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme with the bank as discussed at the State level Review Committee meeting and Board of Directors of the bank made review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs 5 lakhs and accordingly, the Board of Directors decided to discontinue the scheme in the branches where the Nitham Valar Nithi deposits outstanding is less than Rs 5 lakhs. It is further contended in the Counter Statement that the Respondent/Bank is a public sector bank which continues to incur heavy loss and that when the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches and that when the scheme is withdrawn, naturally the agents engaged purely on temporary and commission basis ceased to be engaged further and that was done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. Hence, it cannot be considered as unreasonable, arbitrary, and in violation of the rights of the Petitioner. It is admitted that because of the decision taken by the Board of Directors of the Respondent/Bank Management Nitham Valar Nithi Scheme has been discontinued by the Respondent/Management when found that the Nitham Valar Nithi deposit outstanding was less than Rs 5 lakhs and that scheme is not economically viable in those branches and in pursuance of the stoppage of the scheme, the Petitioners who were engaged as Nitham Valar Nithi deposit collection agents were non-employed by the Respondent/Bank. It is the contention of the Petitioner that it amounts to termination of service and hence the action of the respondent/Management in terminating the services of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice and also a violation of Section 25F of Industrial Disputes Act. It is further contended that the Division Bench of High Court of Madras has held in a batch of Writ Appeal that *the tiny deposit agent is a workman as defined in Section 2(s) of the Industrial Disputes Act and he is not an independent contractor but part of the organisation*. The Respondent would contend that Andhra Pradesh High Court in a decision reported in Vol 93 (1998) FJR 144 has held that tiny deposit agents (Nitham Valar Nithi agents) in bank are not workmen and as per the agency agreement, the bank shall also at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice as there is no provision in the agreement to pay compensation and to give notice to the Nitham Valar Nithi agent prior to the termination. There is no violation of section 25F of Industrial Disputes Act and that Nitham Valar Nithi agents are not workmen and the Petitioner cannot complaint about the violation of Section 25F and other provisions of Industrial Disputes Act, 1947, since the action of the bank is valid. The question whether the tiny deposit collector for a bank as Nitham Valar Nithi agent is a workman or not has been decided by the Hon'ble Supreme Court in a case reported as (2001) 3 SCC pg 36 INDIAN BANK ASSOCIATION Vs Workmen Syndicate Bank. In that case the Hon'ble Supreme Court has held that *'these deposit collectors are workmen within*

the meaning of section 2(s) of Industrial Disputes Act, 1947 and that as seen from Section 2(rr) of the Industrial Disputes Act the commission received by the deposit collectors is nothing else but wage which is dependent on the productivity. This commission is paid for promoting the business of the various banks and that 'there is clearly a relationship of master and servant between the management and the deposit collectors. So from this recent decision of the Hon'ble Supreme Court a quietus has been given to the issue whether the tiny deposit collector or Nitham Valar Nithi agent is a workman or not. The learned counsel for the Respondent also has fairly conceded that in view of this decision of the Supreme Court, the Petitioner can be considered as a workman under Industrial Disputes Act.

8 In this industrial dispute the Petitioner has questioned the action of the management of Pandyan Grama Bank in terminating his employment as Nitham Valar Nithi agent as unjustified for the reason that the Respondent/Management has not issued any prior notice of termination, notice pay or compensation which is a violation under section 25F of the Industrial Disputes Act. In the Claim Statement the Petitioner has further asked for the relief that this Hon'ble Court may be pleased to set aside the order dated 2-3-95 under Ex W6 and to direct the Respondent to reinstate the Petitioner into service with back wages, continuity of service and all other attendant benefits. In the above cited case the Supreme Court has held that *the persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work and that the mode of selection and qualification are not comparable to those of employees even though the employees may be doing similar work*. In the present case, not only on the mode of selection and qualification not comparable, but even the work is comparable. The work which deposit collectors do is completely different from the work which the regular employees do. There was thus no question of absorption and there was also no question of the deposit collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the banks. So in view of this decision of the Supreme Court, the Petitioner cannot claim to be reinstated in service of the Respondent/Bank. Further, in view of the discontinuation of Nitham Valar Nithi Scheme in the branch where it was found to be economically not viable by the Board of Directors of the Respondent/Bank, the post of Nitham Valar Nithi collection agents will not be available for the Petitioner to reinstate in service as Nitham Valar Nithi collection agent.

9 The Petitioner has requested this Court to pass an order to set aside the order dated 2-3-95 of the Respondent/Management. The xerox copy of that order is Ex W6. A perusal of this letter by Chairman to the Manager of Pandyan Grama Bank regarding stoppage of opening of any fresh Nitham Valar Nithi accounts from 1-4-95 in certain branches of the bank was a decision taken by Board of Directors of the Respondent/Bank after reviewing the position of economic viability in continuing the scheme any further, where the amount outstanding under the scheme is less than Rs 5 lakhs in certain branches. MW1 has also spoken to that effect in his evidence. No contra evidence has been let in by the Petitioner to arrive at a conclusion that the decision taken by the Board of Directors, after the discussion at the State level review committee

meeting of the bank in respect of the function of Nitham Valar Nithi Scheme in the bank branches is wrong or incorrect. It is not disputed that the Respondent/Bank is a public sector bank and when the Respondent/Bank found this Nitham Valar Nithi Scheme as not economically viable by considering the cost of effectiveness of the scheme, it can take a decision to discontinue the same in the branches where the amount outstanding under the scheme is less than Rs 5 lakhs. This action of the Respondent/Bank Management has been taken only in respect of the bank branches where it was found not economically viable to continue the scheme. So under such circumstances, the decision taken by the Respondent/Management and in pursuance of the same a circular has been issued under Ex W6 cannot said to be an incorrect and unjustifiable decision taken by the Respondent/Management. So, the question of setting aside the order dated 2-3-95 under Ex W6 does not at all arise.

10 In view of the earlier discussions on the basis of the decision of the Supreme Court above cited, the Petitioner can be considered as a workman under provisions of the Industrial Disputes Act, so far as his engagement as tiny deposit collection agent under Nitham Valar Nithi Scheme for the bank branch. That being the position, the non-employment of the Petitioner without any prior notice and compensation can be considered as a violation of Section 25F of the Industrial Disputes Act, 1947 as it is contended by learned counsel for the Petitioner. In the Counter Statement also, it is the contention of the Respondent/Management that as per the Andhra Pradesh High Court decision at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. Under such circumstances, it can be held that the Petitioner as Nitham Valar Nithi agent has been non-employed because of the stoppage of the scheme in the bank branch on the decision taken by the Respondent/Management is entitled to get retrenchment compensation, as it is held by the Hon'ble Supreme Court in a case reported as AIR 1980 SC 1219 Between Santosh Gupta and State Bank of Patiala. In that case, the Hon'ble Supreme Court has held that '*compensation shall be payable to workman, in case of closure of undertaking as if, the workman had been retrenched, as it is provided under section 25 (fff) of Industrial Disputes Act, 1947*'. It is further observed by the Hon'ble Supreme Court that '*the manifest object of these provisions is to so compensate the workman for loss of employment as to provide him the wherewithal to subsist until he finds fresh employment*'. This decision of the Hon'ble Supreme Court is quite applicable to the present facts of this case. Under such circumstances, it can be concluded that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner as Nitham Valar Nithi Collection Agent is justified, but the Petitioner is entitled for retrenchment compensation under Section 25F of Industrial Disputes Act, 1947. Thus, the point is answered accordingly.

11 In the result, an Award is passed holding that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner Sri T Nelson as Nitham Valar Nithi Collection Agent is justified. The Respondent/Management is directed to pay the Petitioner/Workman as the retrenchment compensation, the amount equivalent to the amount he has earned as his commission for the period of one year immediately preceding to his non-employment. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28th March, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined in common for this case and the connected cases :

For the I Party/Workman: WW1 Sri T. Nelson
WW2 Sri A. Guruviah
WW3 Sri A. Soundarajan
WW4 Sri A. Senthilvel
WW5 Sri T. Chellan
WW6 Sri M. Abdul Rajak
WW7 Sri S. Jayamalai Perumal
WW8 Sri Subburaj
WW9 Sri A. L. Ramu
WW10 Sri S. Raman

For the II Party/Management: MW1 Sri S. Sangilipandi

Documents marked as Exhibits in common for this case and other connected cases :

For the I Party/Workman :

Ex. No.	Date	Description
W1	02-03-84	Xerox copy of the appointment letter issued to Sri A. Guruviah
W2	Nil	Xerox copy of the identity card of Mr. R. Sankara Narayana Moorthy issued by the Respondent
W3	Nil	Xerox copy of the S.B. passbook of Sri G. Subburaj
W4	21-06-85	Original agreement between Sri T. Nelson workman and Respondent/Management
W5	Nil	Xerox copy of the Nitham Valar Nidhi Scheme
W6	02-03-95	Xerox copy of the letter of the Chairman to the Manager, Pandyan Grama Bank regarding stoppage of opening of any fresh non deposit account from 1-4-95 in certain branches
W7	26-06-99	Xerox copy of the circular issued by the Chairman of Bank regarding profits accrued

For the II Party/Management :

Ex. No.	Date	Description
M1	31-01-95	Xerox copy of the daily collection list
M2	01-02-95	Xerox copy of the sundry creditor cash voucher
M3	01-11-95 to 07-11-95	Xerox copy of the weekly consolidation register

Ex. No.	Date	Description
M4	Nil	Xerox copy of the NVN A/c No 356 ledger extract
M5	27-12-91	Xerox copy of the credit transfer voucher NVN A/c
M6	27-12-91	Xerox copy of the debit cash voucher NVN A/c '92
M7	27-12-91	Xerox copy of the NVN discharged receipt voucher
M8	27-12-91	Xerox copy of the requisition letter for closure of NVN Account No 92
M9	18-02-91	Xerox copy of the NVN specimen card No 92
M10	18-12-91	Xerox copy of the credit voucher for demand loan
M11	18-12-91	Xerox copy of the debit cash voucher NVN Account
M12	18-12-91	Xerox copy of the NVN discharged receipt
M13	15-12-90	Xerox copy of the NVN Specimen card
M14	03-12-93	Xerox copy of the NVN agent S B A/c No. 2149
M15	Nil	Xerox copy of the guidelines for NVN scheme
M16	Nil	Xerox copy of the rules regarding NVN Scheme
M17	Nil	Xerox copy of the model of NVN agency agreement
M18	Nil	Xerox copy of the letter of the Chairman to all Branches to discontinue NVN deposits with list of branches
M19	27-04-93	Xerox copy of the NVN cash receipt
M20	Nil	Xerox copy of the NVN A/c No 607 and 615 ledger copy
M21	Nil	Xerox copy of the ledger copy of Mr Nelson's S B Account No. 40
M22	22-02-95 to 02-03-95	Xerox copy of the weekly consolidation register
M23	Nil	Extract of S B Account pertaining to Mr T Nelson

नई दिल्ली, 5 अप्रैल, 2002

का.आ. 1411.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पांडेयन ग्रामा बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लेबर कोर्ट, चेन्नई के पचाट (संदर्भ संख्या आई डी नं 464/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-04-2002 को प्राप्त हुआ था।

[सं एल-12012/73/97-आई.आर.(बी-1)]

अजय कुमार, डैस्क अधिकारी

New Delhi, the 5th April, 2002

S O. 1411 —In pursuance of Section 17 of the Industrial Dispute Act 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No I D No.464/2001) of the Central Government Industrial Tribunal-cum-Labour Court Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Pandyan Grama Bank and their workman, which was received by the Central Government on 04-04-2002.

[No L-12012/73/97-IR(B-I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 28th March, 2002

Present K KARTHIKEYAN,

Presiding Officer

INDUSTRIAL DISPUTE NO. 464/2001

(Tamil Nadu State Industrial Tribunal I.D.No. 4/98)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Workman Sri A Senthil Vel Murugan and the Management of Pandyan Grama Bank, Virudhunagar)

BETWEEN

Sri A Senthil Vel Murugan I party/Workman

AND

The Chairman, II Party/Management

Pandyan Grama Bank, Virudhunagar.

Appearance:

For the Workman M/s PVS Girdhar
Dev Shanker &
R Srinivasan,
Advocates.

For the Management M/s Row & Reddy,
S Vaidhyanathan &
W T Prabakar,
Advocates

The Govt of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No L-12012/73/97/IR(B-I) dated 29-12-1997

2 This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, Chennai where it was taken on file as I D No 4/98 When the matter was pending enquiry in that Tribunal, the Government of India, Ministry of Labour was pleased to order transfer of this case from

that Tribunal to this Tribunal for adjudication. On receipt of records from that Tamil Nadu State Industrial Tribunal, the case has been taken on file as I D No 464/2001 and notices were sent to the counsel on record on either side informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 01-03-2001 with their respective parties and to prosecute this case further. Accordingly, the learned counsel on either side along with their respective parties have appeared and prosecuted this case by filing their Claim Statement and Counter Statement respectively.

3 When the matter came up before me for final hearing on 14-2-2002 upon perusing the Claim Statement, Counter Statement, the other material papers on record, the oral and documentary evidence let in on either side, and after hearing the arguments advanced by the learned counsel on either side this matter having stood over till this date for consideration, this Tribunal has passed the following —

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt for adjudication by this Tribunal is as follows -

Whether the action of the Management of Pandyan Grama Bank in terminating the services of Sri A Senthil Vel Murugan is legal and justified? If not, to what relief the workman is entitled?

4 The averments in the Claim Statement of the I Party/ Workman Sri A Senthil Vel Murugan (hereinafter refers to as Petitioner) are briefly as follows -

The Petitioner was appointed as a commission agent in the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) as part of a scheme called Nitham Valar Nithi Scheme, by an order of appointment dated 09-10-1984. He was appointed as collection agent on prior approval of the Head Office by signing an agreement with the Respondent/Bank. He had furnished a security deposit of Rs 1000/- He was paid commission on the collection made by him at the rate of 3%. He should remit the entire collection made on the previous day into the bank before the banking hours on the next day. If he fails to do so he will lose 50% of the commission on the amount collected and in case of default exceeding one day he will lose the entire commission. The workman is taken to task when any depositor closes the account within a period of six months to twenty four months from the date of opening of the said account. There will be a reduction of the commission payable to the agent in that event. For all acts of commission and omission of the nominee, the collection agent will be responsible and answerable to the bank. The Respondent has issued a letter to the Manager dated 2-3-95 not allowing to open new accounts, if the deposit on the head of 'NVN' account is less than five lakhs. Thus the number of accounts dwindled with consequent decrease in the earning of the deposit collectors. As such, the Respondents have failed to give work to the Petitioner. Hence, this action of the Respondent in terminating the service of the Petitioner indirectly without giving reasons is arbitrary and unreasonable. The Petitioner filed a petition before the Assistant Labour Commissioner on conciliation seeking to reinstate the Petitioner with back wages and continuity of service. On failure of conciliation efforts

taken by the Assistant Labour Commissioner, he submitted a failure of conciliation report to the Government, which in turn referred this matter as an industrial dispute for adjudication by this Tribunal. The impugned order is arbitrary and unreasonable and violative of the Petitioner's rights under Article 14, 16 and 21 of the Constitution. The Division Bench of High Court Madras, in a batch of appeals has held that there is sufficient control over the work of Tiny Deposit Agents by the bank, that the Tiny Deposit Agent is a workman as defined in Section 2(2) of the Industrial Disputes Act and that such a Tiny Deposit Agent is not an independent contractor but part of the organisation. Though in the letter of appointment issued by the bank to the Petitioner, commission was fixed payable to the Petitioner at 3% on the total collection made by the Petitioner each month, clause 16 of the agreement provided that the commission could be determined by the bank time to time. As per rule of the scheme, opening of the account should be done only after the supervisory official authorises the same, though the collecting agent is permitted to receive deposits from door to door. This is an important circumstance which shows that the collecting agent is not an independent contractor so as to enrol customers of the bank on his own. The Tiny Deposit Agent is undoubtedly engaged in the business of the bank i.e. the deposit mobilisation. The remuneration of the Tiny Deposit Agent is fixed in the agreement. Though it is called commission, it will still be remuneration as defined by the decisions of the Supreme Court as well as the definition of the wages in the Industrial Disputes Act. The nature of work of the Petitioner demands daily attendance in bank and deposit of the collections made by him on the previous day. The Petitioner has to do some clerical work as he is bound to fill up relevant forms, ledgers, pass books, etc. The Petitioner should furnish a security deposit of Rs 1000/- which will be placed in fixed deposit for a minimum period of three years. The bank can instruct the agent not to enrol new subscribers at any time. The provision enabling the agent to terminate the agency on giving the bank a month's notice in the circumstances, which goes to show that it is a contract of service. The impugned order of the Respondent does not allow the workmen to open a fresh account under 'NVN' scheme and thereby terminated the services of the Petitioner. The action of the Respondent in terminating the service of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice. The action of the Respondent in terminating the service of the Petitioner is violative of Chapter VA and Chapter VB particularly section 25F of the Industrial Disputes Act. No notice has been served prior to the issuance of the said order, nor was retrenchment compensation paid. The Govt Ministry of Finance issued a directive not to wind up the said scheme. Many of the nationalised banks which were virtually winding up the said scheme restored it. Therefore, it is prayed that this Hon'ble Court may be pleased to set aside the impugned order dated 2-3-95 and direct the Respondent to reinstate the Petitioner in service with back wages, continuity of service and all other attendant benefits.

5 The averments in the Counter Statement filed by the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) are briefly as follows —

The Petitioner was engaged as Nitham Valar Nithi Scheme agent from 9-10-1984. Unlike the regular employees of the bank he was not paid salary. He was paid only commission depending upon the amount of deposit

collected. Unlike the regular bank employees he was not required to attend the bank daily or sign the attendance register. He was not required to attend to any other work in the bank. His work consisted in collecting tiny deposits and deposit them into the bank the next day. He may not be doing collection work not more than twice a week. He is governed by the Agency agreement. Unlike other employees, he was not subject to the disciplinary control of the bank and there are no fixed hours of work. The Nitham Valar Nithi Scheme was in operation in the Respondent/bank since 1979. During State Level Review Committee meeting convened by NABARD on 10-01-95 at Madras, this matter was discussed and the Respondent was advised to review the cost factor in continuing Nitham Valar Nithi Scheme. Subsequently NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme in the bank as discussed at the State Level Review Committee meeting. On that basis, the Board of Directors of the bank made a review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs. 5,00,000. Accordingly, the bank during the Board of Directors' meeting held in February, 1995 decided to discontinue the scheme at the branches, where Nitham Valar Nithi Scheme deposit outstanding was less than Rs. 5 lakhs. When this was implemented, the outstanding under Nitham Valar Nithi Scheme in Shivanthipuram branch was less than Rs. 5 lakhs. Moreover the agency agreement entered into between the bank and the Petitioner clearly states that the bank shall also be at liberty to terminate the agency "for any reason whatsoever". The Petitioner is a rural sector bank which continues to incur heavy loss. When the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches. When the scheme is withdrawn naturally the agent engaged purely on temporary and commission basis ceased to be engaged further. This has been done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. This by no stretch of imagination can be considered unreasonable arbitrary and violative of rights of the Petitioner. NVN rules provides that the depositor may open the account through the collection agent authorised by the bank in this behalf. Thus it is clear that the Nitham Valar Nithi agent is free to open a Nitham Valar Nithi account on his own. The Nitham Valar Nithi agents were not the employees of the bank as their relationship with the bank was only that of contract for service and not contract of service. Nitham Valar Nithi agents need not comply with the minimum conditions stipulated for recruitment as employees of the bank such as age, qualification etc. They were engaged purely on commission basis. Even though he attended collection work in a day but no collection is effected he would not be paid commission for that day. So, the commission cannot be treated as wages. Quite recently the Andhra Pradesh High Court has held in a case that tiny deposit collectors/ Nitham Valar Nithi agents in bank are not workmen. The Nitham Valar Nithi agents come to the branch only when they have to remit the amount they collected towards Nitham Valar Nithi Scheme. He has to fill up only specific forms such as list of accounts in which he had made collection and enter the amount collected in the pass book. Though Nitham Valar Nithi agents were authorised to enter

in the passbook, it is not authoritative and it is subject to verification by the bank with the Nitham Valar Nithi ledger. Nitham Valar Nithi agent was not required to attend any other work in the bank. Nitham Valar Nithi agents are not workmen, even assuming so they cannot complain about violation of Section 25F and other provisions of the Industrial Disputes Act, 1947 as the action of the bank is valid as per section 2(oo) 2(bb) of the Industrial Disputes Act, 1947. The Petitioner has signed the agreement wherein stipulation No. 5 of the agency agreement states that the bank shall also be at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice. There is no provision in agency agreement saving that notice should be issued to Nitham Valar Nithi agents prior to their termination and also there is no provision in the agreement to pay compensation. Hence, there is no violation of section 25F of the Industrial Disputes Act, 1947. In any event, he cannot claim reinstatement because there was no post of Nitham Valar Nithi agent. It was only an agency between the Petitioner and the bank and the scheme came to be abolished as far as Shivanthipuram branch is concerned. That is why, the Andhra Pradesh High Court has held at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. For all the reasons mentioned it is prayed that this Hon'ble Tribunal may be pleased to pass an award rejecting the claim of the Petitioner with cost.

6. When the matter was taken up finally for enquiry, the learned counsel appearing on either side represented that a joint trial can be held for this case along with the other similar cases, 13 in number. The evidence let in on either side both oral and documentary can be treated as a common evidence in all these 14 cases. As per their request a joint trial has been conducted and evidence recorded in these cases along with other cases have been treated as common evidence on either side. Out of the fourteen petitioners of these fourteen cases, ten have been examined as WW1 to WW10 and on the side of the management one common witness has been examined as MW1. For the Petitioner/Workmen seven documents have been marked as Ex. W1 to W7 and for the management twenty three documents have been marked as Ex. M1 to M23 as common documentary evidence in all these cases. The arguments advanced by the learned counsel on either side was heard.

7. The point for my consideration is—

“Whether the action of the Management of Pandyan Grama Bank in terminating the service of Sri A. Senthil Vel Murugan is legal and justified? If not, what relief the concerned workman is entitled to?”

Point —

The Petitioner Sri A. Senthil Vel Murugan has been employed by the management Pandyan Grama Bank as an agent for collecting amounts from the depositors towards Nitham Valar Nithi, a deposit Scheme introduced by the Respondent/Bank. For the petitioner had entered into an agreement with the Respondent/Bank. The Petitioner, as an agent for collecting amount as tiny deposits from the depositors under the said scheme, has to deposit the collected amount into the bank next day. The Petitioner was engaged as such by the Respondent/

Bank on commission basis. It is the admission of the Petitioner that he was paid commission on the collection made by him at the rate of 3%. The copy of the S B passbook of the Petitioner wherein the payment of his commission has been credited. The Petitioner was engaged for the Shivanthipuram branch of the Respondent/Bank as a collection agent for tiny deposits under Nitham Valar Nithi Scheme. The Respondent/Management had sent a letter dated 2-3-95 to the Managers' of certain branch of the Respondent/Bank informing that as per the advice given by NABARD in the meeting held on 10-1-95 at Madras the Board of management of Respondent/Bank has also resolved to discontinue the Nitham Valar Nithi Scheme in the branches, where the outstanding is less than Rs 5,00,000 as on 31-1-95 and advice the branch not to open any fresh Nitham Valar Nithi account from 1-4-95 and to continue the existing Nitham Valar Nithi accounts in the maturity/closure of period/accounts. The copy of that letter sent to the Manager of Koompattu branch of Pandyan Grama Bank is Ex. W6 as it is sent to Sivanthipuram branch. In pursuance of the same, the manager of the said branch of the Respondent/Bank informed the Petitioner a collecting agent under Nitham Valar Nithi Scheme not to open new accounts and thereby the petitioner was not given work by the Respondent/Bank. This non-employment of the Petitioner has been mentioned by the Petitioner in his Claim Statement as termination of his service indirectly without giving reasons and it is arbitrary and unreasonable. It is the contention of the Respondent/Management in their Counter Statement that during state level review committee meeting convened by NABARD on 10-1-95 at Madras, the matter was discussed and the management of the Respondent/Bank was advised to review the cost factor in continuing Nitham Valar Nithi Scheme and subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme with the bank as discussed at the State level Review Committee meeting and Board of Directors of the bank made review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs 5 lakhs and accordingly, the Board of Directors decided to discontinue the scheme in the branches, where the Nitham Valar Nithi deposits outstanding is less than Rs 5 lakhs. It is further contended in the Counter Statement that the Respondent/Bank is a public sector bank, which continues to incur heavy loss and that when the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches and that when the scheme is withdrawn, naturally the agents engaged purely on temporary and commission basis ceased to be engaged further and that was done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. Hence, it cannot be considered as unreasonable, arbitrary, and in violation of the rights of the Petitioner. It is admitted that because of the decision taken by the Board of Directors of the Respondent/Bank Management Nitham Valar Nithi Scheme has been discontinued by the Respondent/Bank when found that the Nitham Valar Nithi deposits outstanding was less than Rs 5 lakhs and that scheme is not economically viable in those branches and in

pursuance of the stoppage of the scheme the Petitioners who were engaged as Nitham Valar Nithi deposit collection agents were non-employed by the Respondent/Bank. It is the contention of the Petitioner that it amounts to termination of service and hence the action of the Respondent/Management in terminating the services of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice and also a violation of Section 25F of Industrial Disputes Act. It is further contended that the Division Bench of High Court of Madras has held in a batch of Writ Appeal that *the tiny deposit agent is a workman as defined in Section 2(s) of the Industrial Disputes Act and he is not an independent contractor but part of the organisation*. The Respondent would contend that Andhra Pradesh High Court in a decision reported in Vol 93 (1998) FJR 144 has held that tiny deposit agents (Nitham Valar Nithi agents) in bank are not workmen and as per the agency agreement the bank shall also at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence there is no violation of natural justice as there is no provision in the agreement to pay compensation and to give notice to the Nitham Valar Nithi agent prior to the termination. There is no violation of section 25F of Industrial Disputes Act and that Nitham Valar Nithi agents are not workmen and the Petitioner cannot complaint about the violation of Section 25F and other provisions of Industrial Disputes Act 1947, since the action of the bank is valid. The question whether the tiny deposit collector for a bank as Nitham Valar Nithi agent is a workman or not has been decided by the Hon'ble Supreme Court in a case reported as (2001) 3 SCC pg 36 INDIAN BANK ASSOCIATION VS WORKMEN SYNDICATE BANK. In that case the Hon'ble Supreme Court has held that *these deposit collectors are workmen within the meaning of section 2(s) of Industrial Disputes Act 1947 and that as seen from Section 2(rr) of the Industrial Disputes Act, the commission received by the deposit collectors is nothing else but wage which is dependent on the productivity. This commission is paid for promoting the business of the various banks and that there is clearly a relationship of master and servant between the management and the deposit collectors*. So from this recent decision of the Hon'ble Supreme Court a quietus has been given to the issue whether the tiny deposit collector or Nitham Valar Nithi agent is a workman or not. The learned counsel for the Respondent also has fairly conceded that in view of this decision of the Supreme Court, the Petitioner can be considered as a workman under Industrial Disputes Act.

8 In this industrial dispute the Petitioner has questioned the action of the management of Pandyan Grama Bank in terminating the services of the Nitham Valar Nithi agent as *the tiny deposit agent* at the Respondent/Management has not issued any prior notice of termination, notice pay or compensation which is a violation under section 25F of the Industrial Disputes Act. In the Claim Statement the Petitioner has further asked for the relief that this Hon'ble Court may be pleased to set aside the order dated 2-3-95 and to direct the Respondent to reinstate the Petitioner into service with back wages, continuity of service and all other attendant benefits. In the above cited case, the Supreme Court has held that *the persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular*

employees doing similar work and that the mode of selection and qualification are not comparable to those of employees even though the employees may be doing similar work " In the present case, not only on the mode of selection and qualification not comparable, but even the work is comparable. The work which deposit collectors do is completely different from the work which the regular employees do. There was, thus, no question of absorption and there was also no question of the deposit collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the banks. So, in view of this decision of the Supreme Court, the Petitioner cannot claim to be reinstated in service of the Respondent/Bank. Further, in view of the discontinuation of Nitham Valar Nithi Scheme in the branch where it was found to be economically not viable by the Board of Directors of the Respondent/Bank. The post of Nitham Valar Nithi collection agents will not be available for the Petitioner to reinstate in service as Nitham Valar Nithi collection agent.

9 The Petitioner has requested this Court to pass an order to set aside the order dated 2-3-95 of the Respondent/Management like the order E\ W6 sent to the Manager of Sivanthipuram branch. A perusal of this letter by Chairman to the Manager of Pandyan Grama Bank regarding stoppage of opening of any fresh Nitham Valar Nithi accounts from 1-4-95 in certain branches of the Bank was a decision taken by Board of Directors of the Respondent/Bank after reviewing the position of economic viability in continuing the scheme any further, where the amount outstanding under the scheme is less than Rs. 5 lakhs in certain branches. MW1 has also spoken to that effect in his evidence. No contra evidence has been let in by the Petitioner to arrive at a conclusion that the decision taken by the Board of Directors, after the discussion at the State level review committee meeting of the bank in respect of the function of Nitham Valar Nithi Scheme in the bank branches is wrong or incorrect. It is not disputed that the Respondent/Bank is a public sector bank and when the Respondent/Bank found this Nitham Valar Nithi Scheme as not economically viable by considering the cost of effectiveness of the scheme, it can take a decision to discontinue the same in the branches where the amount outstanding under the scheme is less than Rs. 5 lakhs, this action of the Respondent/Bank Management has been taken only in respect of the bank branches where it was found not economically viable to continue the scheme. So under such circumstances, the decision taken by the Respondent/Management and in pursuance of the same a circular has been issued under E\ W6 cannot said to be an incorrect and unjustifiable decision taken by the Respondent/Management. So, the question of setting aside the order dated 2-3-95 like E\ W6 does not at all arise.

10 In view of the earlier discussions on the basis of the decision of the Supreme Court above cited, the Petitioner can be considered as a workman under provisions of the Industrial Disputes Act, so far as his engagement as tiny deposit collection agent under Nitham Valar Nithi Scheme for the bank branch. That being the position, the non-employment of the Petitioner without any prior notice and compensation can be considered as a violation of Section 25F of the Industrial Disputes Act, 1947 as it is

contended by the learned counsel for the Petitioner. In the Counter Statement also, it is the contention of the Respondent/Management that as per the Andhra Pradesh High Court decision at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. Under such circumstances, it can be held that the Petitioner as Nitham Valar Nithi agent has been non-employed because of the stoppage of the scheme in the bank branch on the decision taken by the Respondent/Management is entitled to get retrenchment compensation, as it is held by the Hon'ble Supreme Court in a case reported as AIR 1980 SC 1219 Between Santosh Gupta and State Bank of Patiala. In that case, the Hon'ble Supreme Court has held that 'Compensation shall be payable to workman, in case of closure of undertaking as if, the workman had been retrenched, as it is provided under section 25 (fff) of Industrial Disputes Act, 1947. It is further observed by the Hon'ble Supreme Court that the manifest object of these provisions is to so compensate the workman for loss of employment as to provide him the wherewithal to subsist until he finds fresh employment'. This decision of the Hon'ble Supreme Court is quite applicable to the present facts of this case. Under such circumstances, it can be concluded that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner as Nitham Valar Nithi Collection Agent is justified, but the Petitioner is entitled for retrenchment compensation under section 25F of Industrial Disputes Act, 1947. Thus, the point is answered accordingly.

11 In the result, an Award is passed holding that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner Sri A. Senthil Vel Murugan as Nitham Valar Nithi Collection Agent is justified. The Respondent/Management is directed to pay the Petitioner/Workman as retrenchment compensation, the amount equivalent to the amount he has earned as his commission for the period of one year immediately preceding to his non-employment. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28th March, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined in common for this case and the connected cases —

For the I Party/Workman	WW 1 Sri T. Nelson
	WW 2 Sri A. Guruviah
	WW 3 Sri A. Sundararajan
	WW 4 Sri A. Senthilvel
	WW 5 Sri T. Chellan
	WW 6 Sri M. Abdul Rajak
	WW 7 Sri S. Jayamalai Perumal
	WW 8 Sri Subburaj
	WW 9 Sri A. L. Ramu
	WW 10 Sri S. Raman

For the II Party/
Management : MW 1 Shri S. Sangilipandi

Documents marked as Exhibits in common for this case
and other connected cases :—

For the I Party/ Workman :—

Ex No.	Date	Description
W1	02-03-84	Xerox copy of the appointment letter issued to Sri A. Guruviah
W2	Nil	Xerox copy of the identity card of Mr. R. Sankara Narayana Moorthy issued by the Respondent
W3	Nil	Xerox copy of the S.B. Passbook of Sri G. Subburaj
W4	21-6-85	Original agreement between Sri T. Nelson, workman and Respondent/Management
W5	Nil	Xerox copy of the Nitham Valarnudhi Scheme
W6	02-03-95	Xerox copy of the letter of Chairman to the Manager, Pandyan Grama Bank regarding stoppage of Opening of any fresh non-deposit account from 1-4-95 in certain branches
W7	26-6-99	Xerox copy of the circular issued by the Chairman of Bank regarding profits accrued.

For the II Party/ Management —

Ex No.	Date	Description
M1	31-01-95	Xerox copy of the daily collection list
M2	01-02-95	Xerox copy of the sundry creditor cash voucher
M3	01-11-95 to 7-11-95	Xerox copy of the weekly consolidation register
M4	Nil	Xerox copy of the NVN A/c No. 356 ledger extract
M5	27-12-91	Xerox copy of the credit transfer voucher NVN A/c
M6	27-12-91	Xerox copy of the debit cash voucher NVN A/c 92
M7	27-12-91	Xerox copy of the NVN discharged receipt voucher
M8	27-12-91	Xerox copy of the requisition letter for closure of NVN Account No. 92
M9	18-02-91	Xerox copy of the NVN specimen card No. 92
M10	18-12-91	Xerox copy of the credit voucher for demand loan
M11	18-12-91	Xerox copy of the debit cash voucher NVN Account
M12	18-12-91	Xerox copy of the NVN discharged receipt

M13	15-12-90	Xerox copy of the NVN Specimen card.
M14	03-12-93	Xerox copy of the NVN agent S.B. A/c. No. 2149
M15	Nil	Xerox copy of the guidelines for NVN Scheme
M16	Nil	Xerox copy of the rules regarding NVN Scheme
M17	Nil	Xerox copy of the model of NVN agency agreement
M18	Nil	Xerox copy of the letter of the Chairman to all Branches To discontinue NVN deposits with list of Branches.
M19	27-04-93	Xerox copy of the NVN cash receipt
M20	Nil	Xerox copy of the NVN a/c No. 607 and 615 ledger copy
M21	Nil	Xerox copy of the ledger copy of Mr. Nelson's S.B. Account No. 40
M22	22-02-95 to 02-03-95	Xerox copy of the weekly consolidation register
M23	Nil	Extract of S.B. Account pertaining to Mr. T. Nelson

नई दिल्ली, 5 अप्रैल, 2002

का.आ. 1412.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पांडेयन ग्रामा बैंक के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लेबर कोर्ट चैन्नई के पंचाट (संदर्भ संख्या आई डी नं. 470/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 04-04-2002 को प्राप्त हुआ था।

[सं. एल-12012/56/97-आई.आर. (बी-1)]

अजय कुमार, डेस्क अधिकारी

New Delhi, the 5th April, 2002

S.O.1412—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. ID No. 470/2001) of the Central Government Industrial Tribunal-cum-Labour Court Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Pandyan Grama Bank and their workman, which was received by the Central Government on 04-04-2002.

[No. L-12012/56/97-IR(B I)]

AJAY KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 28th March, 2002

Present K. KARTHIKEYAN,

Presiding Officer

INDUSTRIAL DISPUTE No. 470/2001
(Tamil Nadu State Industrial Tribunal I.D.
No. 12/98)

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Sri E Regine Gomez and the Management of Pandyan Grama Bank, Virudhunagar)

BETWEEN

Sri E Regina Gomez I Party/Workman

AND

The Chairman, II Party/Management
 Pandvan Grama Bank, Virudhunagar.

Appearance :

For the Workman	M/s	P V S Giridhar Devi Shanker & R Srinivasan. A d v o c a t e s .
For the Management		M/s Row & Reddy, S Vaidhyathan & WT Prabakar, Advocates

The Govt of India, Ministry of Labour in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No L-12012/56/97/IR(B-I) dated 31-12-97

2 This reference has been made earlier to the Tamil Nadu State Industrial Tribunal, Chennai where it was taken on file as I D No 12/98 When the matter was pending enquiry in that Tribunal the Government of India, Ministry of Labour was pleased to order transfer of this case from that Tribunal to this Tribunal for adjudication On receipt of records from that Tamil Nadu State Industrial Tribunal, the case has been taken on file as I D No 470/2001 and notices were sent to the counsel on record on either side informing them about the transfer of this case to this Tribunal, with a direction to appear before this Tribunal on 01-03-2001 with their respective parties and to prosecute this case further Accordingly the learned counsel on either side along with their respective parties have appeared and prosecuted this case by filing their Claim Statement and Counter Statement respectively

3 When the matter came up before me for final hearing on 14-2-2002 upon perusing the Claim Statement Counter Statement the other material papers on record the oral and documentary evidence let in on either side, and after hearing the arguments advanced by the learned counsel on either side this matter having stood over till this date for consideration this Tribunal has passed the following —

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt for adjudication by this Tribunal is as follows —

“Whether the action of the Management of Pandyan Grama Bank in terminating the employment of Sri E Regina Gomez is justified? If not, to what relief the concerned workman is entitled to?”

4 The averments in the Claim Statement of the I Party/ Workman Sri E Regina Gomez (hereinafter refers to a Petitioner) are briefly as follows —

The Petitioner was appointed as a commission agent in the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) as part of a scheme called Nitham Valar Nithi Scheme, by an order of appointment dated 07-04-1980 He was appointed as collection agent on prior approval of the Head Office by signing an agreement with the Respondent/Bank He had furnished a security deposit of Rs 1000/- He was paid commission on the collection made by him at the rate of 3% He should remit the entire collection made on the previous day into the bank before the banking hours on the next day If he fails to do so, he will loose 50% of the commission on the amount collected and in case of default exceeding one day, he will loose the entire commission The workman is taken to task, when any depositor closes the account within a period of six months to twenty four months from the date of opening of the said account There will be a reduction of the commission payable to the agent in that event For all acts of commission and omission of the nominee, the collection agent will be responsible and answerable to the bank The Respondent has issued a letter to the Manager dated 2-3-95 not allowing to open new accounts, if the deposit on the head of ‘NVN’ account is less than five lakhs Thus, the number of accounts dwindled with consequent decrease in the earning of the deposit collectors As such, the Respondents have failed to give work to the Petitioner Hence, this action of the Respondent in terminating the service of the Petitioner indirectly without giving reasons is arbitrary and unreasonable The Petitioner filed a petition before the Assistant Labour Commissioner on conciliation seeking to reinstate the Petitioner with back wages and continuity of service On failure of conciliation efforts taken by the Assistant Labour Commissioner, he submitted a failure of conciliation report to the Government, which in turn referred this matter as an industrial dispute for adjudication by this Tribunal The impugned order is arbitrary and unreasonable and violative of the Petitioner’s rights under Article 14 16 and 21 of the Constitution The Division Bench of High Court Madras in a batch of appeals has held that there is sufficient control over the work of Tiny Deposit Agents by the bank, that the Tiny Deposit Agent is a workman as defined in section 2(2) of the Industrial Disputes Act and that such a Tiny Deposit Agent is not an independent contractor but part of the organisation Though in the letter of appointment issued by the bank to the Petitioner, commission was fixed payable to the Petitioner at 3% on the total collection made by the Petitioner each month, clause 16 of the agreement provided that the commission could be determined by the bank time to time As per rule of the scheme, opening of the account should be done only after the supervisory official authorises the same, though the collecting agent is permitted to receive deposits from door to door This is an important circumstances which shows that the collecting agent is not an independent contractor so as to enrol customers of the bank on his own The Tiny Deposit Agent is undoubtedly engaged in the business of the bank i.e

the deposit mobilisation. The remuneration of the Tiny Deposit Agent is fixed in the agreement. Though it is called commission, it will still be remuneration as defined by the decisions of the Supreme Court as well as the definition of the wages in the Industrial Disputes Act. The nature of work of the Petitioner demands daily attendance in bank and deposit of the collections made by him on the previous day. The Petitioner has to do some clerical work as he is bound to fill up relevant forms, ledgers, pass books, etc. The Petitioner should furnish a security deposit of Rs 1000/- which will be placed in fixed deposit for a minimum period of three years. The bank can instruct the agent not to enrol new subscribers at any time. The provision enabling the agent to terminate the agency on giving the bank a month's notice is the circumstances, which goes to show that it is a contract of service. The impugned order of the Respondent does not allow the workmen to open a fresh account under 'NVN' scheme and thereby terminated the services of the Petitioner. The action of the Respondent in terminating the service of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice. The action of the Respondent in terminating the service of the Petitioner is violative of Chapter VA and Chapter VB particularly section 25F of the Industrial Disputes Act. No notice has been served prior to the issuance of the said order, nor was retrenchment compensation paid. The Govt. Ministry of Finance issued a directive not to wind up the said scheme. Many of the nationalised banks which were virtually winding up the said scheme restore it. Therefore, it is prayed that this Hon'ble Court may be pleased to set aside the impugned order dated 2-3-95 and direct the Respondent to reinstate the Petitioner in service with back wages, continuity of service and all other attendant benefits.

5. The averments in the Counter Statement filed by the II Party/Management Pandyan Grama Bank (hereinafter refers to as Respondent) are briefly as follows —

The Petitioner was engaged as Nitham Valar Nithi Scheme agent from 07-04-1980. Unlike the regular employees of the bank, he was not paid salary. He was paid only commission depending upon the amount of deposit collected. Unlike the regular bank employees he was not required to attend the bank daily or sign the attendance register. He was not required to attend to any other work in the bank. His work consisted in collecting tiny deposits and deposit them into the bank the next day. He may not be doing collection work not more than twice a week. He is governed by the Agency agreement. Unlike other employees, he was not subject to the disciplinary control of the bank and there are no fixed hours of work. The Nitham Valar Nithi Scheme was in operation in the Respondent/bank since 1979. During State Level Review Committee meeting convened by NABARD on 10-1-95 at Madras this matter was discussed and the Respondent was advised to review the cost factor in continuing Nitham Valar Nithi Scheme. Subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme in the bank as discussed at the State Level Review Committee meeting. On that basis, the Board of Directors of the bank made a review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount

outstanding under the scheme is less than Rs. 5,00,000. Accordingly, the bank during the Board of 'Directors' meeting held in February, 1995 decided to discontinue the scheme at the branches, where Nitham Valar Nithi Scheme deposit outstanding was less than Rs. 5 lakhs. When this was implemented, the outstanding under Nitham Valar Nithi Scheme in Palaya Kayal branch was less than Rs. 5 lakhs. Moreover the agency agreement entered into between the bank and the Petitioner clearly states that the bank shall also be at liberty to terminate the agency any time without assigning any reason whatsoever. The Respondent/Bank is a public sector bank which continues to incur heavy loss. When the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches. When the scheme is withdrawn naturally the agent engaged purely on temporary and commission basis ceased to be engaged further. This has been done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. This by no stretch of imagination can be considered unreasonable, arbitrary and violative of rights of the Petitioner. NVN rules provides that the depositor may open the account through the collection agent authorised by the bank in this behalf. Thus, it is clear that the Nitham Valar Nithi agent is free to open an Nitham Valar Nithi account on his own. The Nitham Valar Nithi agents were not the employees of the bank as their relationship with the bank was only that of contract for service and not contract of service. Nitham Valar Nithi agents need not comply with the minimum conditions stipulated for recruitment as employees of the bank such as age, qualification etc. They were engaged purely on commission basis. Even though, he attended collection work in a day, but no collection is effected he would not be paid commission for that day. So, the commission cannot be treated as wages. Quite recently, the Andhra Pradesh High Court has held in a case that tiny deposit collectors/Nitham Valar Nithi agents in bank are not workmen. The Nitham Valar Nithi agents come to the branch only when they have to remit the amount they collected towards Nitham Valar Nithi Scheme. He has to fill up only specific forms such as list of accounts in which he had made collection and enter the amount collected in the pass book. Though Nitham Valar Nithi agents were authorised to enter in the passbook, it is not authoritative and it is subject to verification by the bank with the Nitham Valar Nithi ledger. Nitham Valar Nithi agent was not required to attend any other work in the bank. Nitham Valar Nithi agents are not workmen, even assuming so they cannot complain about violation of Section 25F and other provisions of the Industrial Disputes Act, 1947 as the action of the bank is valid as per section 2(oo) 2(bb) of the Industrial Disputes Act, 1947. The Petitioner has signed the agreement wherein stipulation No. 5 of the agency agreement states that the bank shall also be at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice. There is no provision in agency agreement saying that notice should be issued to Nitham Valar Nithi agents prior to their termination and also there is no provision in the agreement to pay compensation. Hence, there is no violation of section 25F of the Industrial Disputes Act, 1947. In any event, he cannot claim reinstatement because there was no post of Nitham Valar Nithi agent. It was only an agency between the

Petitioner and the bank and the scheme came to be abolished as far as Palayakayal branch is concerned. That is why, the Andhra Pradesh High Court has held at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. For all the reasons mentioned it is prayed that this Hon'ble Tribunal may be pleased to pass an award rejecting the claim of the Petitioner with cost.

6. When the matter was taken up finally for enquiry, the learned counsel appearing on either side represented that a joint trial can be held for this case along with the other similar cases, 13 in number. The evidence let in on either side both oral and documentary can be treated as a common evidence in all these 14 cases. As per their request, a joint trial has been conducted and evidence recorded in these cases along with other cases have been treated as common evidence on either side. Out of the fourteen petitioners of these fourteen cases, ten have been examined as WW1 to WW10 and on the side of the management one common witness has been examined as MW1. For the Petitioner/Workmen seven documents have been marked as Ex. W1 to W7 and for the management twenty three documents have been marked as Ex. M1 to M23 as common documentary evidence in all these cases. The arguments advanced by the learned counsel on either side was heard.

7. The point for my consideration is—

"Whether the action of the Management of Pandyan Grama Bank in terminating the employment of Sri E. Regina Gomez is justified? If not, what relief the concerned workman is entitled to?"

Point :—

The Petitioner Sri E. Regina Gomez has been employed by the management of Pandyan Grama Bank as an agent for collecting amounts from the depositors towards Nitham Valar Nithi, a deposit Scheme introduced by the Respondent/Bank. For that the petitioner had entered into an agreement with the Respondent/Bank. The Petitioner, as an agent for collecting amount as tiny deposits from the depositors under the said scheme, has to deposit the collected amount in to bank next day. The Petitioner was engaged as such by the Respondent/Bank on commission basis. It is the admission of the Petitioner that he was paid commission on the collection made by him at the rate of 3%. The xerox copy of the S.B. passbook of the Petitioner wherein the payment of his commission has been credit. The Petitioner was engaged for the Palayakayal branch of the Respondent/Bank as a collection agent for tiny deposits under Nitham Valar Nithi Scheme. The Respondent/Management had sent a letter dated 2-3-95 to the Managers' of certain branch of the Respondent/Bank informing that as per the advice given by NABARD in the meeting held on 10-1-95 at Madras, the Board of management of Respondent/Bank has also resolved to discontinue the Nitham Valar Nithi Scheme in the branches, where the outstanding is less than 5,00,000 as on 31-1-95 and advice the branch not to open any fresh Nitham Valar Nithi account from 1-4-95 and to continue the existing Nitham Valar Nithi accounts in the maturity/closure of period/accounts. The xerox copy of that letter sent to the Manager of Koopatti Branch Grama Bank is Ex. W6 as it is sent to Palayakayal branch. In pursuance of the same, the manager of the

said branch of the Respondent/Bank, informed the Petitioner's a collecting agent under Nitham Valar Nithi Scheme not to open new accounts and thereby the petitioner was not given work by the Respondent/Bank. This non-employment of the Petitioner has been mentioned by the Petitioner in his Claim Statement as termination of his service indirectly without giving reasons and it is arbitrary and unreasonable. It is the contention of the Respondent/Management in their Counter Statement that during state level review committee meeting convened by NABARD on 10-1-95 at Madras, the matter was discussed and the management of the Respondent/Bank was advised to review the cost factor in continuing Nitham Valar Nithi Scheme and subsequently, NABARD suggested to the Respondent/Bank to consider the discontinuity of function of Nitham Valar Nithi Scheme with the bank as discussed at the State Level Review Committee meeting and Board of Directors of the bank made review of the scheme and found that the scheme is not economically viable in respect of the branches, where the amount outstanding under the scheme is less than Rs. 5 lakhs and accordingly, the Board of Directors decided to discontinue the scheme in the branches, where the Nitham Valar Nithi deposits outstanding is less than Rs. 5 lakhs. It is further contended in the Counter Statement that the Respondent/Bank is a public sector bank, which continues to incur heavy loss and that when the Nitham Valar Nithi Scheme was found not economically viable by considering the cost effectiveness of the same, the bank had no alternative but to discontinue the scheme at certain branches and that when the scheme is withdrawn, naturally the agents engaged purely on temporary and commission basis ceased to be engaged further and that was done strictly in accordance with the agreement signed by the bank management and the Nitham Valar Nithi agent at the time of engaging the Petitioner. Hence, it cannot be considered as unreasonable, arbitrary, and in violation of the rights of the Petitioner. It is admitted that because of the decision taken by the Board of Directors of the Respondent/Bank Management Nitham Valar Nithi Scheme has been discontinued by the Respondent/Management when found that the Nitham Valar Nithi deposit outstanding was less than Rs. 5 lakhs and that scheme is not economically viable in those branches and in pursuance of the stoppage of the scheme, the Petitioners who were engaged as Nitham Valar Nithi deposit collection agents were non-employed by the Respondent/Bank. It is the contention of the Petitioner that it amounts to termination of service and hence the action of the Respondent/Management in terminating the services of the Petitioner without giving prior notice and hearing is arbitrary and unreasonable and violative of principles of natural justice and also a violation of Section 25F of Industrial Disputes Act. It is further contended that the Division Bench of High Court of Madras has held in a batch of Writ Appeal that *'the tiny deposit agent is a workman as defined in Section 2(s) of the Industrial Disputes Act and he is not an independent contractor but part of the organisation.'* The Respondent would contend that Andhra Pradesh High Court in a decision reported in Vol.93 (1998) FJR 144 has held that tiny deposit agents (Nitham Valar Nithi agents) in bank are not workmen and as per the agency agreement, the bank shall also at liberty to terminate the agency at any time without assigning any reason whatsoever. Hence, there is no violation of natural justice as there is no provision in the agreement to pay

compensation and to give notice to the Nitham Valar Nithi agent prior to the termination. There is no violation of Section 25F of Industrial Disputes Act and that Nitham Valar Nithi agents are not workmen and the Petitioner cannot complain about the violation of Section 25F and other provisions of Industrial Disputes Act, 1947, since the action of the bank is valid. The question whether the tiny deposit collector for a bank as Nitham Valar Nithi agent is a workman or not has been decided by the Hon'ble Supreme Court in a case reported as (2001) 3 SCC pg.36 INDIAN BANK ASSOCIATION VS. WORKMEN SYNDICATE BANK. In that case the Hon'ble Supreme Court has held that *these deposit collectors are workmen within the meaning of Section 2(s) of Industrial Disputes Act, 1947 and that as seen from Section 2(rr) of the Industrial Disputes Act, the commission received by the deposit collectors is nothing else but wage which is dependent on the productivity. This commission is paid for promoting the business of the various banks and that there is clearly a relationship of master and servant between the management and the deposit collectors*. So from this recent decision of the Hon'ble Supreme Court a quietus has been given to the issue whether the tiny deposit collector or Nitham Valar Nithi agent is a workman or not. The learned counsel for the Respondent also has fairly conceded that in view of this decision of the Supreme Court, the Petitioner can be considered as a workman under Industrial Disputes Act.

8. In this industrial dispute the Petitioner has questioned the action of the management of Pandyan Grama Bank in terminating his employment as Nitham Valar Nithi agent as unjustified for the reason that the Respondent/Management has not issued any prior notice of termination, notice pay or compensation which is a violation under Section 25F of the Industrial Disputes Act. In the Claim Statement the Petitioner has further asked for the relief that this Hon'ble Court may be pleased to set aside the order dated 2-3-95 and to direct the Respondent to reinstate the Petitioner into service with back wages, continuity of service and all other attendant benefits. In the above cited case, the Supreme Court has held that *"the persons who are engaged on the basis of individual contracts to work on commission basis cannot be equated with regular employees doing similar work and that the mode of selection and qualification are not comparable to those of employees even though the employees may be doing similar work."* In the present case, not only on the mode of selection and qualification not comparable, but even the work is comparable. The work which deposit collectors do is completely different from the work which the regular employees do. There was, thus, no question of absorption and there was also no question of the deposit collectors being paid the same pay scales, allowances and other service conditions of the regular employees of the banks. So, in view of this decision of the Supreme Court, the Petitioner cannot claim to be reinstated in service of the Respondent/Bank. Further, in view of the discontinuation of Nitham Valar Nithi Scheme in the branch where it was found to be economically not viable by the Board of Directors of the Respondent/Bank. The post of Nitham Valar Nithi collection agents will not be available for the Petitioner to reinstate in service as Nitham Valar Nithi collection agent.

9. The Petitioner has requested this Court to pass an order to set aside the order dated 2-3-95 of the Respondent/Management like the order Ex. W6 sent to the Manager of Palayakayal branch. A perusal of this letter by

Chairman to the Manager of Pandyan Grama Bank regarding stoppage of opening of any fresh Nitham Valar Nithi accounts from 1-4-95 in certain branches of the Bank was a decision taken by Board of Directors of the Respondent/Bank after reviewing the position of economic viability in continuing the scheme any further, where the amount outstanding under the scheme is less than Rs. 5 lakhs in certain branches. MW1 has also spoken to that effect in his evidence. No contra evidence has been let in by the Petitioner to arrive at a conclusion that the decision taken by the Board of Directors, after the discussion at the State Level Review Committee meeting of the bank in respect of the function of Nitham Valar Nithi Scheme in the bank branches is wrong or incorrect. It is not disputed that the Respondent/Bank is a public sector bank and when the Respondent/Bank found this Nitham Valar Nithi Scheme as not economically viable by considering the cost of effectiveness of the scheme, it can take a decision to discontinue the same in the branches where the amount outstanding under the scheme is less than Rs. 5 lakhs, this action of the Respondent/Bank Management has been taken only in respect of the bank branches where it was found not economically viable to continue the scheme. So under such circumstances, the decision taken by the Respondent/Management and in pursuance of the same a circular has been issued under Ex. W6 cannot be said to be an incorrect and unjustifiable decision taken by the Respondent/Management. So, the question of setting aside the order dated 2-3-95 like Ex. W6 does not at all arise.

10. In view of the earlier discussions on the basis of the decision of the Supreme Court above cited, the Petitioner can be considered as a workman under provisions of the Industrial Disputes Act, so far as his engagement as tiny deposit collection agent under Nitham Valar Nithi Scheme for the bank branch. That being the position, the non-employment of the Petitioner without any prior notice and compensation can be considered as a violation of Section 25F of the Industrial Disputes Act, 1947 as it is contended by the learned counsel for the Petitioner. In the Counter Statement also, it is the contention of the Respondent/Management that as per the Andhra Pradesh High Court decision at the worst all Nitham Valar Nithi agents can be awarded compensation and not reinstatement. Under such circumstances, it can be held that the Petitioner as Nitham Valar Nithi agent has been non-employed because of the stoppage of the scheme in the bank branch on the decision taken by the Respondent/Management is entitled to get retrenchment compensation, as it is held by the Hon'ble Supreme Court in a case reported as AIR 1980 SC 1219 BETWEEN SANTOSH GUPTA AND STATE BANK OF PATIALA. In that case, the Hon'ble Supreme Court has held that *'Compensation shall be payable to workman, in case of closure of undertaking as if, the workman had been retrenched, as it is provided under Section 25 (fff) of Industrial Disputes Act, 1947. It is further observed by the Hon'ble Supreme Court that the manifest object of these provisions is to so compensate the workman for loss of employment as to provide him the where with all to subsist until he finds fresh employment.'* This decision of the Hon'ble Supreme Court is quite applicable to the present facts of this case. Under such circumstances, it can be concluded that the action of the management of Pandyan Grama Bank in terminating the employment of the Petitioner as Nitham Valar Nithi Collection Agent is justified, but the Petitioner is entitled for retrenchment compensation under Section 25F of Industrial Disputes Act, 1947. Thus, the point is answered accordingly.

Ex. No.	Date	Description
M1	31-01-95	Xerox copy of the daily collection list
M2	01-02-95	Xerox copy of the sundry creditor cash voucher
M3	01-11-95 to 7-11-95	Xerox copy of the weekly consolidation register
M4	Nil	Xerox copy of the NVN A/c No 356 ledger extract
M5	27-12-91	Xerox copy of the credit transfer voucher NVN A/c
M6	27-12-91	Xerox copy of the debit cash voucher NVN a/c 92
M7	27-12-91	Xerox copy of the NVN discharged receipt voucher
M8	27-12-91	Xerox copy of the requisition letter for closure of NVN Account No 92
M9	18-02-91	Xerox copy of the NVN specimen card No 92
M10	18-12-91	Xerox copy of the credit voucher for demand loan
M 11	18-12-91	Xerox copy of the debit cash voucher NVN Account
M 12	18-12-91	Xerox copy of the NVN discharged receipt
M 13	15-12-90	Xerox copy of the NVN Speciman card
M 14	03-12-93	Xerox copy of the NVN agent S B A/c No 2149
M 15	Nil	Xerox copy of the guidelines for NVN Scheme
M 16	Nil	Xerox copy of the rules regarding NVN Scheme
M 17	Nil	Xerox copy of the model of NVN agency agreement
M 18	Nil	Xerox copy of the letter of the Chairman to all branches to discontinue NVN deposit with list of branches
M 19	27-04-93	Xerox copy of the NVN cash receipt
M20	Nil	Xerox copy of the NVN A/c No. 607 and 615 ledger copy
M21	Nil	Xerox copy of the ledger copy of Mr Nelson's S B Account No 40
M 22	22-02-95 to 02-03-95	Xerox copy of the weekly consolidation register
M 23	Nil	Extract of S B Account pertaining to Mr T Nelson

नई दिल्ली, 2 अप्रैल, 2002

का. आ. 1413.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत गोल्ड माइन्स लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बेंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7/3/2002 को प्राप्त हुआ था।

[सं. एल-43012/21/2000-आई.आर.(एम)]

बी.एम. डेविड, अवर सचिव

New Delhi, the 2nd April, 2002

S O 1413 —In pursuance of Section 17 of the Industrial Dispute Act 1947 (14 of 1947), the Central Government hereby publishes the award (Ref No 78/2000) of the Central Government Industrial Tribunal, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Bharat Gold Mines Ltd and their workman, which was received by the Central Government on 7/3/2002

[No L-43012/21/2000-IR(M)]

B M DAVID, Under Secy

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT****"SHRAM SADAN"****III MAIN, III CROSS, II PHASE, TUMKUR ROAD, YESHWANTHPUR, BANGALORE**

Dated 28th February 2002

PRESENT

HON'BLE SHRI V N KULKARNI, B Com, LLB.
PRESIDING OFFICER CGIT-CUM-LABOUR
COURT.

BANGALORE

C.R. No. 78/2000**I PARTY**

Smt Pushpa Rani,

C/o Shri S Savaridoss,

CITU, Marikuppam Post,

Kolar Gold Field-563119

II PARTY

The Managing Director,

Bharat Gold Mines Ltd,

Oorgaum Post,

Kolar Gold Field-
563120

Karnataka

AWARD

1 The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No L-43012/21/2000/IR (M) dated 17th October, 2000 for adjudication on the following schedule

SCHEDULE

"Whether the Claim of Smt Pushpa Rani, for adapting the following formula for the payment of Voluntary Retirement Scheme dues is proper? If not, to what relife the workman is entitled?"

Last drawn wage × 30 days × No of years

26 Days

2 The First party was working with the management and the management did not consider the same and therefore, Industrial dispute is raised

3 When the case was received by this Tribunal, notices were sent to the parties

4 It is seen from the records that throughout the proceedings first party was not appeared at all Vakalat was filed by the Second Party RPAD notice was sent but even after that first party did not appear

5 It appears that the first party is not interested in this dispute Therefore following order is passed

ORDER*The reference is rejected*

(Dictated to P.A transcribed by her corrected and signed by me on 28th February, 2002)

V N KULKARNI, Presiding Officer

नई दिल्ली, 2 अप्रैल, 2002

का. आ. 1414.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मैजागौन डॉक लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, बेंगलूर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 7/3/2002 को प्राप्त हुआ था।

[सं. एल-45011/2/95-आई.आर.(एम)]

बी.एम. डेविड, अवर सचिव

New Delhi the 2nd April, 2002

S.O.1414.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref No 70/97) of the Central Government Industrial Tribunal, Bangalore now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of MAZAGON DOCK Ltd and their workman, which was received by the Central Government on 7/3/2002

[No L-45011/2/95-IR-(M)]

B M DAVID, Under Secy

ANNEXURE**BEFORE****THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT****"SHRAM SADAN"****III MAIN, III CROSS, II PHASE, TUMKUR ROAD, YESHWANTHPUR, BANGALORE.**

Dated 12th February 2002

PRESENT

HON'BLE SHRI V N KULKARNI, B Com, LLB.
PRESIDING OFFICER CGIT-CUM-LABOUR COURT.
BANGALORE.

C.R. No. 70/97

I PARTY

The General Secretary.
Mazagon Dock Limited
Employees Association.
Panambur.
Mangalore-575010
Advocate-V S. Naik

II PARTY

The Dy General Manager.
Mazagon Dock Limited.
Mangalore Yard, Panambur.
Mangalore-575 010
Advocate-K R Putturaya

AWARD

1 The Central Government by exercising the powers conferred by clause (d) of sub-section 2A of the Section 10 of the Industrial Disputes Act 1947 has referred this dispute vide order No L-45011/2/95/IR (Misc) dated 8th August, 1995 for adjudication on the following schedule

SCHEDULE

"Whether the action of the management of Mazagon Dock Ltd, Mangalore Yard in not categorizing Sri Arnold Fernandes and six others at par with Diploma Holders in Mechanical Engineering is justified? If not to what relief they are entitled?"

2 The General Secretary Mazagon Dock Limited Employees Union, Mangalore has raised this dispute regarding not categorizing Sri Arnold Fernandes and six others at par with Diploma Holders in Mechanical Engineering and therefore this Industrial Dispute is raised

3 Parties appeared and filed Claim Statement and Counter respectively

4 The case of the union in brief is as follows —

5 Mazagon Dock Ltd. is an entity having its head office at Bombay and yards to carry out its operations in Maharashtra as well as elsewhere. The same Mangalore Yard is headed by the Second Party Deputy General Manager. The activity that is chiefly carried on at the Mangalore Yard of the second party is fabrication of components and structures required mainly for natural oil and gas exploration in the Country

6 The Mangalore yard was established in the year 1983. The management recruited the staff according to the needs felt from time to time and no strict or uniform policy was followed in this regard

7 Seven workmen are BSC qualified Technical Staff recruited to work in the Mangalore Yard. Appointments of these seven individuals did not take place as in the ordinary method of their seeking employment in the Second Party. The then Second party officials who were scouting for qualified persons required for their purposes, invited the above seven to appear for interviews. Most of the said seven were already in employment elsewhere and on promises of better prospects they joined the second party at Mangalore yard

8 The appointment took place in the year 1984-85. They were appointed because of their academic qualifications. They were specially trained for the purpose. Individuals named at 1 to 4 were trained in NDT (non destructive testing) techniques through foreign technical experts at the Mangalore Yard. Persons named at 5 to 7 were trained on the job at the pipe coating plant laboratory at the Mangalore yard. But training of these individuals was covered for a period of six months. They were looking after the quality control of the work turned out at the Mangalore Yard. Some of the Mechanical engineers (Diploma holders) were working at the Mangalore Yard who were till then looking after Quality Control work and were phased out from the said work. The work done and the responsibilities discharged by the concerned seven B Sc Technical staff were of the same type as were and are still being done by the rest of the DME's who continue to be to work in the Mangalore Yard. What is sought to be pointed out is that the work and responsibilities of the B Sc Technical Staff working in the quality control department as well as other technical departments were identical to those of DME's

9 The academic qualification wise, the said 7 B Sc Technical Staff stood at higher level, having studied for 3 years after PUC to acquire their graduate degree as against the study of SSLC+3 years at Polytechnic level by the DME's

10 The appointment letters to the concerned 7 B Sc Technical Staff and to other employees of Mangalore Yard were issued for the first time in 1986 and till then there was no categorization of employees at the Mangalore Yard. The Seven workmen were functioning as of before along with the DME's still working in the Quality Control department under interchangeable designations as Supervisors, Technicians, Ultrasonic Testing Operators, NDT Technicians, Quality Control Technicians etc. However, in the appointment letters issued in 1986 as aforesaid, when categorization was for the first time carried out at the Mangalore Yard, the concerned BSc Technical Staff were put in 'Skilled-I' category which was equal to 'Class IV Workmen Grade' whereas their counterpart DME's who were all the while working along with them in the same Quality Control Department, discharging the same functions and having same responsibilities, though academically lesser qualified were classified in higher category of Foreman-II which is Supervisory Grade of Class-II. They were fixed to the lower pay scale as stated in para 6 and 7 of the Claim Statement. There was unjust and discriminatory categorization on these seven workmen

11 A charter of demand from the first party union in 1989 inter-alia contained a demand for setting right the anomalies which had arisen from the wrong categorisation of the employees by the Second party management in 1986. A committee was constituted for considering the said anomalies. Details are given in para 8 of the Claim Statement

12 It is the further case of the union that inspite of above term, a time bound process was indicated to resolve the anomalies such as ones pertaining to the 7 B Sc Technical Staff concerned in the present reference, till date they have not been categorized on par with the DME's. The workmen are deprived of monetary benefits and the non categorization is illegal. The union for these reasons and

for some other reasons has prayed to pass award in its favour.

13. Against this the case of the management in brief is as under :—

14. It is the case of the management that initially in the year 1983-84, the staff and operators were engaged on adhoc basis and there were no recruitment rules and personnel were engaged on job requirement basis. The Personnel were recruited purely on temporary and adhoc basis and later these recruitments were regularised in April 1986 as per the terms of settlement arrived at between the Management and the Workmen's Union before the Assistant Labour Commissioner (Central), Mangalore on 9-4-1986.

15. It is true that these workmen are B.Sc. qualified persons and they were recruited to work in Mangalore yard and other allegations are not correct.

16. It is categorically denied by the management that the work done and the responsibilities discharged by the first party employees were of the same type as were and are still being done by the Foreman-II (Possessing Qualification of Diploma in Mechanical Engineering) in the Quality Control Department of Mangalore Yard.

17. The main contention of the management is that the duties of Foreman-II (possessing qualification of Diploma in Mechanical Engineering) are quite different from the duties done by these workmen. Therefore, the question of categorization as alleged by them does not arise at all. It is also perverse on the part of the first party to maintain that academic qualification wise, they should be held on higher level, having studied 3 years after P.U.C. to obtain their B.Sc. graduate degrees as against the Diploma in Mechanical Engineering of Foreman II which is cleared after the study of SSLC+3 years in the Polytechnic. In fact, DME is a technical/engineering qualification unlike the BA/B.Sc. which is a general degree qualification.

18. It is denied that the first party employees were working in the Quality Control Department under interchangeable designations as Supervisors, Technicians, Ultrasonic Testing Operators, NDT Technicians, Quality Control Technicians etc., along with DME's.

19. It is true that in the year 1986 the first party employees were categorized as Skilled-I and Diploma Holders in Engineering were categorized as Foreman-II and it is not correct to say that the Diploma Holders in Engineering were having Academically lesser qualifications and were discharging the same functions and have same responsibilities as the first party employees.

20. It is true that the first party employees were fixed on a pay scale of Rs. 630-12-690-14-830 in the Skilled-I Grade during categorization in April 1986 whereas the DMEs were categorized as Foreman-II in the pay scale of Rs. 925-30-1075-35-1390. The contention of the first party employees that their jobs are equal to those of Foreman II with Diploma in Engineering qualification is basically wrong. They cannot claim the same position of Foreman II. Other benefits like TA/DA etc., are different to the first party employees and Foreman II with Diploma in Engineering qualification as per the Company rules. The

management has not violated the principles of equal work and equal pay.

21. It is further alleged by the management that the Four B.Sc. qualified temporary employees, Sl. Nos. 1 to 4 among the first party employees, were trained by the second party and deployed for NDT work in offshore quality control department in April 1985 and were engaged on temporary basis without appointment orders or regular pay scales, as in the case of all other categories of staff and workmen engaged at Mangalore Yard at that time.

22. It is the further case of the management that as per the record of discussions between the management and the Workers Union on 9-4-86 in the presence of Assistant Labour Commissioner (Central), Mangalore, all the Staff and workmen including the first party employees were issued appointment orders after categorization in different categories and these seven B.Sc. qualified first party employees (of which four were engaged for NDT work and the remaining 3 were engaged for pipe coating quality control) were categorized in the Skilled I grade in the payscale of Rs. 630-12-690-14-830. Whereas Graduate Clerks and other equivalent traders were categorized in the Assistant I grade of Rs. 600-11-655-13-720-15-885. Thereafter as per Clause No. 3 of the settlement dated 24-2-1987 before the ALC, a Tripartite Committee, consisting of representatives of National Productivity Council, (Bangalore Chapter), the Management of MDL-Mangalore yard and the Employees Association, was constituted to resolve the cases of anomalies in categorization, if any. The memorandum of understanding were ratified by signing a Settlement under Section 12(3) of the Industrial Dispute Act before the Assistant Labour Commissioner (Central), Mangalore on 1-12-1987. The dispute regarding the anomaly in categorization of these 4 workmen had conclusively settled as per the terms of agreement arrived at between the Employees Association of the first party and the Management before the Assistant labour Commissioner (Central) under Section 12(3) of the Industrial Dispute Act, 1947.

23. It is the further case that the fabrication of heavy engineering structures requires technically qualified personnel to organize fabrication works in compliance of technical specifications especially in the areas of fabrication, quality control comprising on job inspection, non destructive testing and such other inspection/testing of the welding jobs/joints. The second party recommended Graduate Engineers as Officers for the said purpose.

24. Prior to the engagement of the Four first party workmen at Sl. Nos. 1 to 4 in January 1985, the three B.Sc. qualified workmen at S. Nos. 5 to 7 of the first party had been engaged for quality control jobs in the Pipe Coating project since January 1984. The diploma holders in engineering were engaged for fabrication and inspection jobs, as they have the basics knowledge of Engineer, drawings, welding, workshop practice/fit up, alignment etc., which form a part of their Diploma curriculum. The technical knowledge in the above areas is necessary for those who are required to carry out fabrication/inspection jobs of heavy engineering structures.

25. The B.Sc. course includes subjects like Physics, Chemistry and Mathematics but does not include the above mentioned engineering subjects and therefore these B.Sc. qualified personnel were engaged in Non-destructive

Testing jobs, and for quality control work in Pipe Coating works for which the B Sc qualification with initial training was adequate

26 The works and responsibilities entrusted to the Dipoloma Holders who were categorized as Foreman II were different from the works entrusted to the B Sc personnel who were categorized as Skilled I & II

27 The second party had trained the 4 B Sc personnel in Ultrasonic Testing Methods, to use them for such NDT jobs at the yard But M/s Engineers India Limited who were the Inspection Agency at Mangalore Yard on behalf of the client M/s Oil and Natural Gas Commission did not permit MDL to use its own staff for undertaking such Ultrasonic testing jobs and those jobs were got done through outside subcontractors who had been qualified for such jobs by M/s EIL The Four B Sc Graduates could not be utilized for the UT jobs their services were used for coordinating the NDT/UT jobs of the UT Contractors and 4 workmen were recategorised as Skilled II with effect from 1-1-86 as per the Tripartite MoU dated 7-11-1987 In para 18 of the Counter Charter of Demands are stated in detail

28 The Comparison of the grades and pay scales prevailing at MDL Main Yard at Mumbai with those at Mangalore yard by the first party has no relevance and is not correct MDL, Mumbai was established more than 200 years ago as a private company and passed through various ownerships When the Govt of India took over the Company in 1960, it was owned by the Peninsular and Oriental Steam Navigation Company and the British India Steam Navigation Company of the United Kingdom The Mazagpm Dock limited at Mumbai is involved in various activities like Ship building, Ship repairs, Building of Submarines and construction of Off Shore Oil Drilling Structures The Mangalore Yard was stated in the year 1983 primarily for coating of pipes for subsea laying for ONGC and Construction of Offshore Oil Drilling Platforms and Jack up Rigs were added to its activities in 1984

29 History of the management is stated in para 19 of the Counter

30 It is the further case of the management that the dispute raised by the first party is without any merit and the first party union has not revealed all the true facts while raising the dispute and they have been hiding some of the above material facts with a view to make unreasonable and unlawful gains The management for these reasons has prayed to reject the reference

31 It is seen from the records that the management examined MW1 and closed the case

32 Against this, one of the workman Natraj got examined himself Various documents are marked on behalf of both sides

33 I have heard detailed arguments I have considered the Written Arguments and the decisions relied by the management The dispute referred is "**Whether the action of the management of Mazagon Dock Ltd., Mangalore Yard in not categorizing Sri Arnold Fernanades and six others at par with Diploma Holders in Mechanical Engineering is justified? If not, to what relief they are entitled?**"

34 The evidence of MW1 is that the present dispute pertains to Seven employees, and at present only 4 persons

are working and they are Natraja, P S, C S Kamalaksha, Ramesh Kulal and Kusumananda Shetty With regard to three other employees, the employees at SI No 1 & 2 have left the services of the company and SI No 4 is promoted as an Officer All the workmen are B Sc Graduates and they are trained by the company to Work at Offshore Quality Control department and SI No 5 to 7 were deputed to work at Pipe Coating Project quality control department

35 It is further stated by him that during 1983-85 they have appointed 36 Diploma Holders in Mechanical and Electrical Engineering and these Diploma Holders were fitted to Foremen II Grade when they are appointed and the scale of wages between the B Sc graduates and Diploma Holders are different Foremen II were given higher grade

36 He has further stated that DME means Diploma in Mechanical Engineering The Diploma Holders were categorized as Skilled-I in the initial stage He has deposed about the various settlements between the Union and the Management He has categorically stated that it is not correct to say that the work of these workmen and the Diploma Holders is similar There is no injustice to these workmen while fixing the categorization The management is closed from 25-10-2000

37 He has further stated that the final settlement of all the demands were signed between the management and the Union

38 The evidence of WW1 is that is B Sc (PCM) First class holding PG, DBM and ASNT level He is having all technical qualifications His further evidence is that they were all designated as Skilled I (Industrial) with effect from 13-4-1985 and they did not accept that His main evidence is that Diploma Holders designated as Foreman II were discharging similar work Various documents are marked in his evidence

39 In the instant case, the learned counsel appearing for the parties have filed Written Arguments I have considered the entire arguments on each points raised by both sides

40 The learned counsel appearing for the second party has also filed written reply on 6-2-2002

41 The main contention of the 2nd Party is that the union has raised this dispute and the office bearers have not prosecuted the case properly and these Seven workmen have no locus standi to prosecute the dispute because no office bearer of the union of the Joint Secretary has come before this Tribunal to give evidence and has not prosecuted this dispute

42 It is a fact that the Joint Secretary of the Employees Association has raised this Dispute One of the Workman, WW1 has stated in his cross examination that he was the member of the Union in the year 1987 He says that the union is closed He says that he does not know when the union is closed He also says in his cross examination that he has given evidence on behalf of the seven workmen and he is having authorization of SIX persons but that authorization is not filed He has also stated in his cross examination that he has not produced any documents to show that six others are members of the union

43 A question was put to him "whether the dispute is raised by the Union or by Seven Workmen" he says by the Union and adds saying that the dispute is raised with the consultation of workmen "

On reading the above evidence of workman it is abundantly clear that the union is closed long back and the present dispute raised by the union is not properly prosecuted this dispute and WW1 has no *locus standi* and has no authorization to give evidence on behalf of Six others Admittedly the other six workmen have not appeared before this Tribunal and have not given any evidence and they are not entitled for any relief

45 This is all relevant because according to the management there were number of settlements and the settlement was between the union and the management Various Charter of Demands are marked There was settlement in the year 1991, and again in the year 1993 In view of the settlement arrived between the union and the management the dispute regarding categorization does not survive at all The settlement of 1991 and 1993 between the Union and the Management is binding on these workmen

46 It is seen from the records that a Memorandum of Settlement for having settled all pending disputes including the present dispute was signed in between the Management and the Union on 13-7-1995 and that settlement is at Exhibit M-10 and it is under section 12(3) of the I D Act 1947 It is also clear from the records that thereafter the Second Party management never received any fresh Charter of Demand pertaining to the recategorization of Seven employees from the first party union This Settlement Ex M-10 has not been terminated and therefore it is binding on the first party

47 There was Charter of Demand on 2-8-1993, and that was again settled once again finally The said settlement was before the ALC at Mangalore

48 It was vehemently argued by the learned counsel for the management that when the dispute is settlement between the Union and the management as per Ex M-10 there is no merit in this dispute and the reference has to be rejected

49 Of course dispute is raised by the union When it was in existence then but that is not prosecuted by the office bearers of the union It is in the evidence of 1st Party that the union is closed long back

50 I have carefully perused all the Charter of Demands and Settlements Pending anomalies regarding recategorization of B Sc Graduates doing technical jobs was also settled

51 It was vehemently argued by the learned counsel appearing for the first party that the duties discharged by these workmen and Diploma Holders is one and the same and therefore categorization has to be at par with Diploma Holders in Mechanical Engineering

52 Against this it was vehemently argued by the learned counsel appearing for the management that in the instant case qualifications required for Diploma Holders and these Seven B Sc Graduates is not one and the same and therefore there is no merit in the dispute raised by these workmen There is another contention on behalf of the management that the company is closed

53 It is in evidence that a portion of the company is closed and therefore there is no merit in the arguments

advanced by the learned counsel appearing for the management that the dispute does not survive because the company is closed

54 In support of this argument he relied decision of the Hon'ble Supreme Court of India

55 The facts of the case on hand are quite different from the facts of the decision relied by the learned counsel appearing for the management

56 It is seen from the facts that in the above decision the business was completely closed but in the instant case a portion of the company is closed I have read the following decisions relied by the learned counsel appearing for the management

1 1957 I LLJ Page 235—Supreme Court

2 1983 I LLJ Page 232—Supreme Court

3 1990 II CLR Page 481—Bombay High Court

4 1991 II CLR Page 815—Karnataka High Court

5 2001 CLR Page 1058—Supreme Court

6 1989 SC AIR 1308

7 1989 SC 1256

57 It was contended by the learned counsel appearing for the first party union that the dispute is properly raised and the Company is not closed and therefore there is no merit in the contention put forth by the management that on account of closure of business and the company the dispute does not survive

58 The first party seven workmen, are only B Sc Graduates recruited to work as U T Operators and the DMEs are Diploma Holders in Engineering There is no evidence on behalf of the workmen that they have been doing similar duties that of DMEs and even if they are doing so their class of category is different from that of the DMEs of class of Foreman II Category Further the qualifications are different Both are not treated as the same category or class

59 In this regard I have read the decision reported in AIR 1989 SC page 1308 carefully and I am of the opinion that there is no merit in the dispute raised by the Workmen On merit also the first party has no case at all

60 It was also argued by the learned counsel appearing for the first party union that in the counter the management has not taken clear stand about the maintainability of the dispute and therefore the management at this stage cannot say that the dispute is not maintainable but in the counter it is said that the dispute is not maintainable

61 I have considered all the contentions put forth by the parties and I am of the opinion that the dispute raised is proper by the union, but it is not prosecuted properly and these workmen have no *locus standi* because there is final settlement in respect of categorization between the union and the management

62 The Correspondence filed by the workmen will not help the Workmen to prove their case On request by the management an additional issue was framed to the effect that whether the Mazagon Dock Ltd has been closed if so what is the effect By now it is well settled that in a proceedings like this all the issues can be tried together and I have taken up all the points together and considered them

63. I have considered the entire material before me carefully, and I am of the opinion that, one of the contention of the management that the business is closed and therefore, the dispute is not maintainable is not correct, because only one of the Division is closed as conceded by the Legal Counsel for 2nd Party.

64. It is not clear from the records that the business is completely closed and it is seen from the records that one of the division is closed and therefore, the management is not correct in saying that on account of closure of business, the dispute is not maintainable. Admittedly WW1 is not an official of the union. Further the membership of these workmen is not proved and therefore, though the dispute is raised by the union, it is not properly prosecuted and these workmen have no *locus standi*. The legal counsel for the management submitted that one of the Division is closed.

65. At the cost of repetition I may say here that the demand of these workmen has been finally settled as contended by the management.

66. Admittedly the qualification of these workmen are not equal to the qualification of employees categorized as Foreman-II who are Diploma Holders in Mechanical Engineering. The duties performed by the B Sc employees has not been proved as equal to the duties performed by the DMEs. Even if their duties are same their category of class of employment including educational qualifications are not one and the same and they are treated differently through out in their service.

67. I have considered the decision reported in AIR 1989 S C 1308 and I am of the opinion that the management is correct in its contentions in this regard.

68. I have considered all the decisions relied by the management and I am of the opinion that there is no merit in this dispute because the dispute has been finally settled between the union and the management and these workmen have no *locus standi*. Accordingly I proceed to pass the following Order.

ORDER

The reference is rejected.

(Dictated to PA transcribed by her corrected and signed by me on 12th February 2002)

V N KULKARNI Presiding Officer

नई दिल्ली, 2 अप्रैल, 2002

का. आ. 1415.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार न्यू मैंगलोर पोर्ट ट्रस्ट के प्रबन्धन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण बंगलोर के पचास का प्रकाशित करती है, जो केन्द्रीय सरकार को 07.02.2002 को प्राप्त हुआ था।

[संख्या: 012/3/97-आइ.आर.(एम)]

बी.एम.डेविड, अवसर सचिव

New Delhi, the 2nd April, 2002

S.O. 1415.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (1947) the Central Government hereby publishes the award (Ref No 38/98) of the Central Government Industrial Tribunal Bangalore

now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of New Mangalore Port Trust and their workman, which was received by the Central Government on 07-03-2002.

[No. L-45012/3/97-IR(M)]

B M DAVID, Under Secy

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT

“SHRAM SADAN”,

III MAIN, III CROSS, II PHASE, TUMKUR ROAD, YESHWANTHPUR, BANGALORE

Dated 26th February, 2002

PRESENT

HON'BLE SHRI V N KULKARNI, B. Com. LLB
Presiding Officer CGIT-Cum-Labour Court, Bangalore

C.R. No. 38/98

Ist PARTY

Kum Jayalaxmi,

C/o Ramchandra,

Devadiga, Hill-House,

Near Dadri Rocks,

Mangalore-575004

IInd PARTY

The Chairman,

New Mangalore

Port Trust,

Panambur

AWARD

1. The Central Government by exercising the powers conferred by clause (d) of Sub-section 2A of the Section 10 of the Industrial Disputes Act, 1947 has referred this dispute vide order No L-45012/3/97/IR (M) dated 1st April 1998 for adjudication on the following schedule

SCHEDULE

“Whether the action of Deputy Chairman New Mangalore Port Trust in terminating the services of Kum Jayalaxmi with effect from 7-12-96 (A N) is justified? If not to what relief she is entitled?”

2. The First party was working with the Management. She was terminated and therefore, Industrial dispute is raised.

3. Parties appeared and filed Claim Statement and Counter respectively.

4. The case of the 1st Party in brief is as follows —

5. It is the case of the 1st party that she was appointed as a Clerk by the 2nd Party management w.e.f. 9-8-1993 and she was working under the Assistant Superintendent, Cargo Handling Workers' Administrative Wing of the 2nd Party Management. She worked continuously for over 3 ½ years and the Dy. Chairman of the 2nd Party management issued an order dated 7-12-1996 informing that the 1st Party was engaged in assisting the Audit in workers Administrative Wing and the said audit work was come to an end consequent on the introduction of Statutory Audit, the management has decided to terminate the engagement of the 1st party w.e.f. 7-12-1996 afternoon. The management had terminated the services of the 1st party. The order of termination terminating the

services of the 1st Party on the ground that her services are no longer required consequent on the introduction of the statutory audit cannot be sustained

6 It is the further case of the 1st Party that engagement of the 1st Party on daily wage basis beyond 30 days should have been done through the Employment Exchange as per the provisions of the Employment Exchange Compulsory Notification of Vacancies Act and the 1st Party was engaged direct without Employment Exchange Notification and therefore, the procedure is not correct. Even under the said Act, engagement only through Employment Exchange is not compulsory. The 1st Party was regularly engaged in NMR Scheme w.e.f. 9-8-1993 and since then she was regularly working till she was illegally terminated. The 2nd Party management being an authority as defined under Article 12 of the Constitution of India was fully aware of the engagement of the 1st Party on NMR basis w.e.f. 9-8-1993. The management extracted the work from the 1st Party throughout for over 3 ½ years before she was terminated by way of retrenchment. The Action of the management amounts to retrenchment as defined under Section 2(oo) of the Industrial Dispute Act. The 2nd Party management is governed under the provisions of Chapter V-A and V-B of the Act and the management for having not complied with the mandatory requirements of Chapter V-A and V-B of the Act. The entire action of the management cannot be sustained. She is not gainfully employed and she is under extreme difficulty in maintaining her family. 1st Party workman for these reasons and for some other reasons has prayed to pass award in her favour.

7 The case of the 2nd Party management is that the 1st Party was engaged w.e.f. 9-8-93 on daily wage basis for a particular job which was of temporary nature. The nature of work for which she was engaged was preparation of Records required by the FA&CAO of the New Mangalore Port Trust in connection with the audit of RCHW Adm Wing Accounts. The RCHWA Wing was a separate branch functioning under the Traffic Manager of the Port Trust. It deals with only the management of Cargo Handling workers who were earlier employed by the listed workers Managing Committee and taken over by the Port Trust on 15-3-1990 under the provisions of NMP Cargo Handling workers (Regulation of Employment Scheme 1990).

8 The administration and Finance etc. of this wing was separate and it was looked after by Traffic Manager. Unlike the Port Trust Port Trust Accounts, the accounts of RCHWA Wing were not subject to statutory audit by Accountant General, Karnataka for the reasons that the scheme under which the Cargo handling Workers were taken over was not approved by the Central Government and notified in the official gazette.

9 It is the further case that in the absence of statutory audit, the Ministry of Surface Transport insisted that all the financial transactions of the RCHWA wing are to be audited by the FA&CAO of the Port Trust till such time the Statutory audit is taken over by the Accountant General, Karnataka.

10 It is the further case that in the absence of excess clerical staff in the RCHWA wing to assist the FA&CAO's Audit Party in conducting the Internal Audit of RCHWA wing accounts, the services of the applicant Kum. Jayalaxmi were obtained for preparing and making available the records of RCHWA wing pertaining to the period

from 15-3-90 to FA&CAO for audit purpose. However, the Accountant General, Karnataka agreed to take up the statutory audit of the accounts of RCHWA Wing from 1st April 1996. The RAO appointed by the Accountant General, Karnataka to conduct the statutory Audit have got its own staff required for conducting the audit of RCHWA wing and he did not ask for any clerical assistance from RCHWA wing. Consequent to this, there was no need for the 2nd Party Management to continue the engagement of the 1st Party on daily wages from 7-12-1996 and therefore her services were discontinued.

11 It is the further case of the management that the Claim Statement is filed after a long delay. It is incorrect to say that 1st Party was appointed as Clerk by the appoint management w.e.f. 9-3-1993 while the 2nd Party Chairman is only the Chief Executive of the Port Trust and he is not the appointing authority for the employees working in the RCHWA wing of the Port Trust. RCHWA wing is a separate set up under the Traffic Department of the Port Trust and the traffic manager is the appointing authority for employees working in RCHWA wing. The service conditions are described in para 8 of the Counter.

12 The engagement of the 1st Party was only on daily wages basis and that too for a temporary nature and the discontinuation is correct. Allegations made by the 1st party are not correct. The service conditions of the employees of RCHWA wing are governed by the New Mangalore Port Cargo Handling Workers (Regulation of Employment Scheme 1990) and as per item No. 9(v) staff/workers for new assignment shall be selected from among the candidates sponsored by the local employment exchange. In view of this, the recruitment through local employment exchange is inevitable in the case of RCHWA wing. In spite of this, the 1st party was engaged direct without getting her name sponsored by the local employment exchange. In addition, for major ports, notification of vacancies to the employment exchange is compulsory under the Employment Exchange (Compulsory Notification of Vacancies) Act. The 2nd Party claimed that the termination of the 1st Party NMR employment was illegal. The action of the management is not in violation of Section 2(oo) of the Industrial Disputes Act 1947.

13 It was clearly stated in the order that on account of completion of work for which the 1st Party was engaged, the NMR employment was terminated. Such termination is permissible under Sub Section (bb) of Section 2(oo) of Industrial Dispute Act and therefore it will not attract retrenchment defined under the said Act.

14 It is the further case of the management that even if it is termed as retrenchment Chapter VB of Industrial Dispute Act will not be applicable in this case, because the establishment under which the 1st Party was working forms a part of Major port which is not an Industrial Establishment to which Chapter VB applies. As regard Chapter V A, the only requirement which the 2nd party has not observed is the non issue of notice in form P prescribed under Section 25 F of the ID Act to the Ministry of Labour etc. and it is only an intimation regarding retrenchment and obtaining prior permission of the appropriate government before resorting to the retrenchment of 1st Party is not prescribed in the case of 2nd Party establishment as it is a Major Port and not an Industrial Establishment to which Chapter V applies.

15 It is the further case of the management that the management by way of abundant caution has offered

compensation as required under Section 25 F which has been refused by the 1st Party

16 It is the further case of the management that as held by the Supreme Court in various cases a temporary employee has no right to seek continuous for absorption. The management for these reasons and for some other reasons has prayed to reject the reference

17 It is seen from the records that on behalf of the management MW1 is examined. Against this first party got herself examined as WW1

18 After the close of the evidence I have heard both sides in detail

19 It is seen from the records that management has filled written arguments and some decisions. I have read the written arguments carefully. I have perused all the decisions relied by the management and the workman

20 It is deposed by MW1 that the 1st party was engaged as a daily waged employee w.e.f. 9-8-1993 and she was not engaged to work in accordance with the recruitment rules of the 2nd Party. She was engaged to work purely on daily wages. She was not taken under Port Trust. She was working in the Register cargo Handling Workers Administrative Wing

21 It is further deposed by him that the financial transactions of RCHWAW are not part of the financial transaction of Port Trust Board when the 1st Party was engaged. The Port Financial Advisor were asked to audit this wing and the specific work entrusted to the 1st Party was to assist the Financial Advisors in the audit work. It was the only purpose she was engaged. Ex M-1 is the document showing the engagement of the 1st Party

22 It is further deposed that since the work of auditing was taken over by A G Karnataka from the financial year 1996-97 onwards. The management discontinued internal auditing and consequently the continuation of this workman. Various documents are marked in his evidence. Muster Rools are produced. He has also said that they have paid the statutory compensation but she has refused to receive the same. MW1 is cross examined but nothing is made out from his cross examination so as to disbelieve his evidence

23 It is stated by MW1 in his cross examination that it is true that the department in which the 1st Party was working is not continuing. This itself will not help the workman at all. Because according to the case of the management she was engaged on daily wages for temporary work for assisting the FA&ACO

24 1st party Workman has given detailed evidence in support of her case. She said in her cross examination that she had applied for job and she taken for work. She further says that she applied by seeing the Newspaper but the Newspaper is not produced

25 She further said in her cross examination that she was called for interview but she does not know the date. She admits in her cross examination that no Appointment Order was given. She admits in her cross examination that she refused notice and the amounts sent by the management

26 She further said that she was taken on consolidate pay and no subsequent order was given to her. She also said that she worked on daily wages first to assist finance work. She also admits that now the A G Karnataka is looking after the accounts department

27 With the cross examination it is clear that she engaged on daily wages and she was asked to assist the FA&CAO for a temporary work and that work is taken over by the A G Karnataka

28 I have perused the documents marked in this case carefully. According to Ex M-1 1st Party was appointed on a consolidated payment of Rs 1500/- per month till the audit work is completed. From this documents it is clear that the first party workman was engaged only for a particular work and that too till the completion of that particular work namely audit

29 According to Ex M-5 the audit work came to an end on the introduction of statutory audit

30 It is also seen from the records namely Ex M-6 that one month's notice pay which was admissible was offered by the management along with compensation and wages for the period 1-12-1996 to 8-12-1996

31 It is in evidence that the first party workman refused the pay and the compensation. It is also clear from Ex M-2 that the Financial transactions of the RCHWA Wing merged with the accounts of RCHWA Wing with Port Trust Accounts and that work was taken up by the A G Karnataka

32 If we considered all these documents and evidence of MW1 and WW1 it is clear that 1st Party workman was engaged on daily wages only to assist the FA&CAO for audit work and that was a temporary work for a fixed period. No Appointment Order is produced by the workman saying that she was appointed for any permanent work

33 I have considered the decisions relied by the 2nd Party management. The management has relied the following decisions

- (1) AIR 1997 SC 3657
- (2) AIR 1999 SC 923
- (3) AIR 1964 SC 1613

34 keeping in mind the principles help in the above decisions and the facts of the case, I am of the opinion that the appointment was only on daily wages and that too for a temporary work and that work was completed. Admittedly the first party workman was not appointed through any scheme or any rules

35 It is also clear from the records that audit work of the RCHWA Wing done by FA&CAO in which the first party was working is no longer existed after 1996

36 I have read the decision relied by the workman in CA No 5933/1994 dated 21st January 1998 of the Hon'ble Supreme Court of India. The workman cannot take the benefit of the above decision because the facts of the case on hand are quite different from the facts of the above decision

37 Taking all this into consideration I am of the opinion that there is no merit in this reference and accordingly I proceed to pass the following Order

ORDER

The reference is rejected.

(Dictated to PA transcribe by her corrected and signed by me on 26th February 2002)

V N KULKARNI Presiding Officer

नई दिल्ली, 2 अप्रैल, 2002

SCHEDULE

का.आ. 1416.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूरेनियम कॉर्पोरेशन ऑफ इंडिया के प्रबंधन के सदस्य नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण धनबाद के पचाट (सदर स 148/1998) को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-03-02 को प्राप्त हुआ था।

[स एल-42012/4/97-आई आर-(एम)]

बी एम डेविड, अवर सचिव

New Delhi the 2nd April 2002

S.O. 1416.—In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref No 148/1998) of the Central Government Industrial Tribunal/Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Uranium Corpn of India and their workmen which was received by the Central Government on 19-03-2002

[No L-42012/4/97-IR(M)]
B M DAVID Under Secy

ANNEXURE

**BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2) AT DHANBAD**

PRESENT : Shri B. Biswas, Presiding Officer

In the matter of an industrial Dispute under Section 10 (1) (d) of the I D Act 1947

Ref No 148 of 1998

PARTIES : Employers in relation to the management of Uranium Corporation of India Ltd, Jaduguda and their workman

APPEARANCES :

On behalf of the workman Shri D K Verma
Advocate

On behalf of the employers Shri P R Rakshit,
Advocate

State Jharkhand Industry Uranium

Dhanbad the 21st February 2002

AWARD

The Govt of India Ministry of Labour in exercise of the powers conferred on them under Section 10 (1) (d) of the I D Act 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No L- 42012/14/97/IR (M) dated the 28th May 1998

Whether the action of the management of Uranium Corporation of India Ltd in dismissing Shri Bamia Purty vide Order dated 17-4-97 is justified? If not to what relief the workman is entitled?

2 The case of the concerned workman according to W S in brief is as follows —

The concerned workman in the W S submitted that he was employed in the Mines under the management in and around 1968 as an unskilled workman but because of his diligence performance efficient good conduct and behaviour he was ultimately promoted to the post of Drill Man C. It has been submitted by him that to the best of his knowledge and information no standards norms for drilling a particular number of meters per crew was ever laid down and fixed and no such notification also was issued to that effect. What was required to a crew was to work for a period of eight hours giving interval and attending the call of nature and other incidental requirement such as availability of air pipe water pipe availability of food made ready by Timberman for crew availability of power and such other facilities necessary to work smoothly. It has been further submitted that the concerned workman though rendered his unblemished service all on a sudden he was served with a chargesheet No UCIL/PF/1094 (Adm/Mines/92 dated 30-4-92) alleging therein that he had resorted to go slow Tactics with effect from 18-4-92. As a result of which there had been reduction in the production. It was further alleged that even after the workman was pursued to give the normal production he had been deliberately slowing down the work by undercutting the drilling meterage and thereby he disobeyed the management which according to the chargesheet was wilful insubordination of the reasonable and lawful instructions of the supervisors. It was further alleged that by alleged disobedience the workman was inflicting damage to the work in progress for production by recourse to go slow. By the said chargesheet the concerned workman was directed to submit his reply within 48 hours of the receipt of the same as to why disciplinary action should not be taken against him. Simultaneously the workman was suspended pending enquiry into the matter. It has been submitted that on receipt of the chargesheet submitted his reply within the statutory period denying all the charges brought against him. He submitted that his performance in any way was not lower than any other crew at any time and in any case during the period of slow down. He was not under normal health condition as he had suffered from Pox for which he continued to receive treatment till the end of May 1992 and he disclosed that due to his weakness for the said illness he was kept out of drilling job by the Incharge concerned. He further submitted that if his production was lower in relation to his previous performance it was due to his ill health and weakness and this matter he submitted was fully within the knowledge of the management. He submitted that issuance of chargesheet was arbitrary and discriminatory because there were 50 crew in which each of the drill man were assisted by two helpers and the performance during the period of alleged slow down of all the crews were identical. But instead of taking action against all the crews the management took up three drill men including the concerned workman and chargesheet was submitted to them on that ground though no action was taken whatsoever against the other drillmen who gave identical production during the relevant period.

He submitted that the management instead of accepting his reply which he submitted in response to the chargesheet given to him issued a memorandum dated 5-5-92 stating that the explanation submitted by him was not satisfactory and for which he was asked to appear before the Enquiry proceeding to be conducted by the E.O. Shri M. M. Srinivasan, Dy. Supdt. (Geology). Thereafter a domestic enquiry was held and after completing the said domestic enquiry the E.O. submitted his report finding him guilty to the charges brought against him in view of the said report of the E.O., the Manager (Personnel and Administration) issued a letter of dismissal on 21-1-92. He submitted that his order of dismissal was completely a denial of natural justice as the E.O. did not properly consider his reply in course of that enquiry. Accordingly he raised an industrial dispute for conciliation which ultimately resulted reference before the CGIT No. 1, Dhanbad. He submitted that learned CGIT No. 1, Dhanbad after adjudicating the preliminary issue relating to the validity of the domestic enquiry and violation of principles of natural justice passed an Award dated 26-5-95 by which the said order of punishment was set aside. The concerned workman was directed to be reinstated with liberty to the management to proceed with the enquiry if it is so desired. Against the said award passed by the learned P.O. CGIT No. 1, Dhanbad the management filed a Writ Petition before the Hon'ble High Court at Patna, Ranchi Bench questioning the validity of the aforesaid Award. The workman also filed a Writ Petition praying for subsistence allowance/ back wages. He submitted that the Hon'ble Court refusing to interfere the Award in question dismissed the Writ Petition on merit filed by the management while his petition was allowed. Thereafter the management furnished a copy of enquiry report to him dated 11-2-1997 against which he made a representation dated 10-3-1997 with prayer for considering the enquiry report submitted by the E.O. but the management instead of considering his prayer accepted the finding of the E.O. and instructed him to make representation against the punishment only. He submitted that the management preversely, arbitrarily and illegally with a view to victimise him did not think necessary to consider his representation and the enquiry report. Thereafter the management further issued an order of dismissal against him on 17-4-1997 illegally, arbitrarily and violating the principles of natural justice. He submitted that the Manager (P & A) did not give any reasoned order adverting to each of the points raised by the workman and giving reasons also as to why he did not find any merit rejecting those points. After receiving the second order of dismissal he made an appeal and submitted demand of justice raising an industrial dispute to the Chairman and Managing Director of UCIL, Jaduguda on 7-5-97. But the Managing Director too rejected his appeal in absolutely mechanical way without giving reasons. Accordingly the concerned workman raised an industrial dispute before the ALC (C) for conciliation which resulted reference to this Tribunal. The concerned workman accordingly has prayed for passing an Award setting aside the order of dismissal passed by the management with full back wages and other benefits including the cost of the proceeding.

5 The management on the contrary after filling W.S -cum-rejoinder have denied all the claims and allegation which the concerned workman has asserted in his W.S. It has been submitted that the concerned workman was initially appointed on casual basis in the

year 1972. Since the management corporation is a Govt. of India Enterprise it does not adopt any unfair labour practice and whenever a workman becomes eligible for promotion he is given such promotion for which there is nothing for tom-tomming. Promotions are given as per norms of promotion when he is eligible to get the same. But that does not immune the workman from punishment whenever he commits misconduct detrimental To the interest and Discipline of the Management. The Management submitted that each of drill man working in a shift is responsible to drill the nominated average meterage as per norms made by the corporation. Normally a drillman gives such out put which are based on records. Therefore, the pretext that drilling was joint responsibility of the drill man and his helper is absolutely incorrect. The management also submitted that it was within the full knowledge and information of the concerned workman regarding the standard norms for drilling for a particular drill man to give definite meterage and such norms were all along maintained by the drill man including the concerned workman. They submitted that it was most unfortunate that with some malafide intention and in order to cause loss to the management corporation the concerned workman not only by himself adopted 'Go slow' tactics but incited to follow suit and in this way he worked for a period in question which was detrimental to the interest of the management corporation. The management submitted that due to the 'Go slow' work for the period from 18-3-92 to 18-4-92 by the drill man production in the mine was considerably decreased. They submitted that deliberately the concerned workman and the other drill men started 'Go slow' work and for which during this period they only gave 25 meters per shift whereas the standard norms for drilling was about 50 meters per shift per crew. It has been further submitted that inspite of appeal made by the management to the drillman including the concerned workman they did not consider necessary to withdraw the 'Go slow' tactics in the work and for which the management sustained huge financial loss. The management further submitted that the pretext taken by the concerned workman for his lowering the production due to sickness is far from cry and cannot be accepted it all. They submitted that the concerned workman never informed the management about his inability in giving the meterage during the period in question on account of his sickness. Accordingly this plea of sickness taken by the concerned workman was deliberate and willful with a view to slow down of work along with other drill men. They submitted that the concerned workman on the contrary motivated other crews on the shifts during the period in question to carry on go slow the work and being incited the other crews also started the same practices of 'go slow' work. It has been further submitted by the management that the concerned workman along with a few other who motivated that the workman not go give usual meterage were chargesheeted and instead of mass action, the workman directly involved in such infarious act were proceeded with, and accordingly action taken against the concerned workman by the management was neither arbitrary nor discriminatory. The mangement also denied the fact that the Enquiry Officer submitted any purverse and arbitrary report after completing his enquiry. The concerned workman was given full opportunity by the E.O. to defend his case and the concerned workman contested the case to the best of his ability. The order of dismissal passed by the competent authority against the

concerned workman dt. 21-9-92 was just and proper as the said competent authority was satisfied with the Enquiry report. The management submitted further that by order of the learned Presiding Officer, CGIT No. 1, Dhanbad copy of the enquiry report and other relevant papers were handed over to the concerned workman for making his reply. The concerned workman accordingly submitted his reply but as the said reply was far from satisfactory to the charges brought against him the disciplinary authority again issued an order of dismissal. Against that order of dismissal again the concerned workman submitted his appeal but that too was rejected by the Chariman and the Managing Director on 17-5-97. It has been submitted by the management that the claim of the concerned workman finds no basis and for which he is not entitled to get any relief which he has prayed for.

The points for decision in this reference are:—

“Whether the action of the management of Uranium Corporation of India Ltd. in dismissing Shri Bamia Purty vide order dated 17-4-97 is justified? If not, to what relief the workman is entitled?”

7. DECISIONS WITH REASONS

It is admitted fact that the concerned workman was a drill man-C under the management. It is also admitted fact that the concerned workman was chargesheeted on the ground of misconduct for violation of clause 31(e) 42(a), 42(v), 42(y), 42(cc), and 42(gg), of the Standing Order. It is the specific contention of the management that drilling crews of mining division adopted ‘go slow’ tactics with effect from 18-3-92 and as a result of which standard drilling norms which was 50 meter/day/crew fell down considerably and average meterage per day per crew came to 24 M.T.S. As a result of falling down such production the management sustained serious financial loss. The management further submitted that the drillmen/crew started ‘go slow’ work intentionally and without any reasons and for their illegal acts the management sustained heavy financial loss. They submitted further that the drill men were seriously pursued to leave that go slow tactics but it was in vein. Further allegation is that the concerned workman and two other drill men incited other drill men to adopt such policy of go slow work as a result of which being incited the other drill men also followed suit and for which the production decreased very steadily. The management submitted that the reason for the said go slow work which they came to know from the drill men was about their dissatisfaction with the new L.T.C. provision. Their demand was for cash compensation in lieu of L.T.C. to visit a place other than home town. As the proposal of cash compensation was not approved by the Govt. the management could not concede to the proposal given by the union for cash compensation in lieu of the L.T.C. to visit a place other than home town. On the contrary the concerned workman have categorically denied the claim made by the management. The concerned workman submitted that there was no standing norms for drilling of a particular meter per crew ever laid down or fixed by the management. No such notification was also ever issued. He submitted what was required for a crew was to work sincerely for a period of eight hours giving allowance for interval for rest and attending the call of nature and etc. and other incidental requirement such availability of air pipe and water pipe, face made ready by Timber man for crew, availability of power/electricity

and such other facilities necessary to work smoothly. The concerned workman submitted that though the chargesheet which was given to him was illegal and arbitrary he submitted his reply wherein he clearly assigned his reason under which circumstances he could not give normal production like previous months during the period from 18-3-92 to 18-4-92. He submitted categorically that during the month from 17-1-92 owing to chicken pox he remained under medical care of UCIL hospital where he was declared fit to resume his duty from 11-2-92 by the doctor of the said hospital. Thereafter his incharge on his appeal gave him some light work for about one month to get him fit physically. Further he submitted that thereafter due to his physical weakness and weak health he could not perform his job which was strenuous one properly and for which his production fall down. He categorically denied the fact to indulge go slow work along with other drill men during the period from 18-3-92 to 18-4-92. He also denied the fact he incited other drill men to adopt such practice to go slow work. During the enquiry the concerned workman had the scope to agitate all these facts but the enquiry officer after completing the enquiry submitted his report finding the concerned workman guilty of all the charges brought against him. Accordingly the disciplinary authority consulting the enquiry report dismissed the concerned workman from his service with effect from 21-9-92. Against that order he raised an industrial dispute before the ALC(C) which ultimately resulted reference Case No. 89/93. The said reference case was disposed of by the learned Tribunal Judge on 26-5-95 and passed the Award accordingly. By the said Award the order of dismissal was set aside and Tribunal directed the management to reinstate the concerned workman with liberty to the management to proceed with the enquiry if it so desires by placing the employee under suspension and continuing the enquiry from the stage of furnishing the concerned workman with the report. Against that Award passed by the learned CGIT No. 1, Dhanbad the management preferred a Writ petition No. CWJC No. 3231/96(R) before the Hon’ble high Court at Patna, Ranchi Bench. The said petition was dismissed on merit. Accordingly in compliance to the direction of the learned Presiding Officer, CGIT No. 1, Dhanbad the management provided the copies of the enquiry report and other relevant papers to the concerned workman. The concerned workman after getting the same submitted his reply but as the disciplinary authority was not satisfied with the reply he was again dismissed from his service by order dt. 17-4-97. Against the said order of dismissal the concerned workman made an appeal before the Chairman and Managing Director of UCIL on 7-5-97 but his appeal was rejected and order of dismissal was confirmed by the Chairman and Managing Director. Thereafter the concerned workman raised this industrial dispute before the ALC(C) which ultimately resulted reference to this Tribunal. In course of hearing question was raised about the validity of the domestic enquiry held by the Enquiry Officer. Order No. 22 dt. 28-11-2001 passed by this Tribunal is clear on this point. As the fairness, propriety of the domestic enquiry was decided by the learned Presiding Officer, CGIT No. 1 in Ref. No. 89/93 there was no scope to re-discuss this matter and learned Advocate on both sides agreed to this fact. Therefore, at this stage there is no scope at all to discuss if the domestic enquiry held against the concerned workman by the E.O. was fair proper and in accordance with the principles of natural justice. Here the moot

question is whether the charge was proved against the concerned workman in course of enquiry, if punishment awarded against the concerned workman was fair, proper and in accordance with the principles of natural justice, and if the concerned workman is entitled to get any relief relating to his punishment under Section 11A of the I.D. Act.

9. It is the specific submission of the management that the concerned workman incited other drill men to lower down the normal production by adopting 'go slow' tactics. Considering the evidence as record it is seen that the said 'go slow' was started by the drillman as they were dissatisfied with the decision of the management in refusing cash compensation in lieu of L.T.C. to visit places other than home town. It has to be taken into consideration if the management has been able to establish that incitement made by the concerned workman to other drillman in the matter of slowing down production by adopting 'go slow' tactics. I have considered the evidence of the management carefully. The management had the scope to examine other workman to substantiate the claim that they started to go slow work being incited by the concerned workman. But the management did not consider necessary to examine a single witness to that effect. Accordingly it is very hard to believe that the concerned workman was personally involved to incite other drillmen for lowering down production by adopting 'go slow' tactics though it is fact that all the drillmen started 'go slow' work during the period from 17-3-92 to 18-4-92 and as a result of which production came down steadily and for which the management sustained serious financial loss. Adopting go slow tactics is one thing and incitement to other workman to lower production by go slow work is other thing. Later one is much more serious. Considering the evidence of record. I have failed to find out in lots of evidence relying on which it can be said that the concerned workman was personally involved in inciting other drill men/crew to adopt go slow tactics for lowering down the production. Accordingly I hold that the management has failed to establish the charge under clause 13(e) of the Standing Order. Now let us consider if the concerned workman was guilty of the misconduct for violation of clause 42(a), 42(v), 42(y), 42(cc) and 42(gg) of the Standing Order of the management. MW-1 i.e. D. Acharya, Before the E.O. disclosed that on various occasion he tried to convince the drillers not to lower down the production by adopting go slow tactics. But they did not respond to the call. As a result the drilling meterage did not come back to normalcy which was about 45 to 50 meter per day per crew from average 22 to 23 meter per crew. He submitted further that inspite of repeated pursuation when the drilling meterage did not come back and the mine continued to suffer production he was compelled to report the matter to the disciplinary authority. MW-2 incharge of 370 M1 during his evidence corroborated the fact disclosed by MW-I. D. Acharya relating to go slow work adopted by the drillmen and fall of production as a result of such work. The said 'go slow' work, it appears over L.T.C. issue. It is seen further from his evidence that he also persuaded the drillmen to leave the practice of 'go slow' and to normalise production of the mine but they did not pay any heed to his appeal. He submitted that the concerned workman being a drillman/crew adopted the same tactics along with others and as a result of which production was lowered down very steadily. It is seen that the standard norm of drilling per crew was 40 to 50 meterage while during 'go slow' work it came down to 20 to 24 meter. As such production has

practically came down to 1/2 of its production. The concerned workman submitted that there is no notification or standard norms for drilling a particular number of meter per crew and for which the management cannot fix any responsibility on any drillman with the claim of lowering down of the production. It is fact that no notification relating to the norms for drilling was placed before the Tribunal but the management submitted various statistics relying on which there is sufficient scope to say that it was the normal practice to drill 40 to 50 meter per day per crew. It is further seen that not only other drillman but also including the concerned workman drilled such standard of meterage prior to their starting 'go slow' work. From the statistics I have failed to found out any date relying on which there is scope to say that prior to adopt 'go slow' policy any drillman/crew any day drilled 20 to 25 meter. Therefore there is reason to believe that normal standard of drilling was in between 40 to 50 meter per day per crew of the drilling and the drill man/crew all along adopted the said policy shortly. It is not the case of the concerned workman that drilling of less than 40 to 50 meter came down due to other reasons beyond their control. It is not expected that all the drillman will give drilling meterage less than 25 meter per day per crew during the period from 17-3-92 to 18-4-92. Therefore, there is sufficient to believe that due to go slow tactics adopted by drillman production of meterage was lowered down half of its normal production. This fact also admitted by one workman in course of his evidence before the E.O. It is seen that the concerned workman on 15th and 16th March drilled about 40 to 45 meters as such untill and unless any satisfactory reason comes in there is no scope to say that drilling of lower meterage was not due to his own fault but due to his other exigency beyond his control. It is further seen that the management requested the other drill man to give up 'go slow' policy with a view to rise production to its normal stage. But their appeal went in vein. Considering the statistics submitted by the management there is sufficient reason to believe that though no notification was placed before the Tribunal by the management about the standard norms of production considering all aspects there is sufficient reason to believe that normal production considering all aspects there is sufficient reasons to believe the normal production range was between 40 to 50 meter drilling per day per crew. Accordingly the drill man including the concerned workman cannot avoid of the responsibility to explain why the production came down to badly during that particular period of one month. As such there is reason to believe that wilfully the concerned workman and his associates proceeded with their 'go slow' work which amounts to insubordination and disobedience and their action of slowing down to work was deliberate and for which the management sustained financial loss heavily. I therefore hold that the charges brought against the concerned workman under clause 42(a), 42(v), 42(y), 42(cc) and (gg) have been proved against the concerned workman. As a result of which relying on the enquiry report the disciplinary authority dismissed the concerned workman from service with effect from 21-9-1992 but subsequently as the concerned workman raised an industrial which resulted to reference case No. 89/93 before the CGIT No. 1, Dhanbad. Learned Presiding Officer, CGIT No. 1, Dhanbad passed order after giving some direction setting aside punishment. Accordingly in compliance to the direction of the Learned Presiding Officer, CGIT No. 1, Dhanbad the management handed

over enquiry report and other relevant papers to the concerned workman submitted his reply but as it was not satisfactory the disciplinary authority again passed an order of dismissal. Thereafter the concerned workman preferred appeal before the Chairman/Managing Director of the company for consideration of his prayer but his appeal was rejected and order of dismissal passed by the disciplinary authority was accepted.

10. It is the contention of the concerned workman that the disciplinary authority arbitrarily, illegally and without considering the principles of natural justice passed the said order of dismissal relying on perverse report submitted by the E.O. He also submitted that his second order of dismissal and dismissal of his appeal by the Chairman/Managing Director were also illegal and arbitrary as they did not assign any reason in passing the said order of dismissal or dismissing the appeal. In spite of claiming that report of the E.O. was perverse the concerned workman did not consider necessary to establish the same. The domestic enquiry has already been decided was fair proper and in accordance with the principles of natural justice. Therefore, at this stage there is no scope to say that the report of the enquiry officer was perverse. It is fact that the enquiry officer did not properly consider his ailment prior to his making submission of the purpose. But for the reason I find little scope to say that entire report should be considered as perverse one. I have already discussed above that the concerned workman along with other drillmen activity participated in 'go slow'. It is the claim to the concerned workman that he was a patient of Pox and after his recovery as he felt very much weak physically he was not capable to perform his normal duties. He further submitted that considering his weak health he made an appeal before his superior officer to provide him with light job and his prayer was considered and he was allowed to carry on light job for about one month. The evidence of G. Moitra if taken into consideration will support this claim G. Moitra MW-2 before the E.O. disclosed that he allowed light job to the concerned workman for his recovery from weak health for about a month. The concerned workman was declared fit for duty on 10-2-92 and if that one month's light job which was given to the concerned workman is taken into consideration in that case the concerned workman could not carry on his normal work till 10/12-3-1992. The 'go slow' work started from 17-3-92 i.e. immediately after joining the concerned workman to his normal duties. The concerned workman submitted that he was under medical treatment upto May, 1992 and for which he was not in a position to carry on his normal work and for which his production was hampered. I have considered that medical report which appears to me far from satisfactory. The genuinity of the medical report could have been considered if the concerned workman was able to produce necessary prescription issued by the said doctor in support of his claim. But he did not consider necessary to do so. It has been admitted by the concerned workman that he remained under treatment at UCIL hospital if so in that case there was scope on the part of the concerned workman to get his further treatment from the said hospital. No explanation is forthcoming why instead of taking help of the medical officer of the management hospital he had to take help of other medical officer from other corner. However, considering all the evidence on record I cannot deny the fact that he was not a patient of pox just prior to the incident in question. I also cannot

deny the fact that he was not given light job by the official of the management for one month due to his weak health. Learned Advocate for the management in course of hearing argument submitted that wilful go slow amounts to serious misconduct and for which punishment of dismissal awarded to the concerned workman cannot be revoked in any manner. In support of this claim learned advocate for the management relied on the decision reported in 1997(76) FLR page 456, 1997 SCC (L&S) at page 1489. I have considered all the decisions referred to above and I find support of submission of the learned advocate for the management. It is seen that as a result of go slow work the management sustained serious financial loss. The management is a Govt. of India undertaking and the mine where the concerned workman was employed was a uranium mines which has to be considered as a very vital mine for the national interest. As such it is expected that the workmen including the concerned workman who were engaged under such organisation would show their utmost diligence in the matter of performing their duties considering its national importance. It is seen that on flimsy ground they took the law in their own hand and deliberately slowed down the work as a result of which production fell down steadily and for which management sustained serious financial loss and as a result of which the concerned workman was dismissed from his service. Now the question is if such order of dismissal can be reconsidered under the provision of 11A of the I.D. Act, 1947. According to Section 11A where an industrial dispute relating to the dismissal or discharge has been referred to a Labour Court/Tribunal or National Tribunal for adjudication and in course of adjudication proceeding Labour Court, Tribunal or National Tribunal as the case may be, is satisfied that the order of discharge or dismissal was not justified it may by its award set aside the award of dismissal or discharge, direct reinstatement of the concerned workman on such terms and condition if any as it thinks fit or include the award of lesser punishment in lieu as the circumstances may require. Therefore, considering the said settled principle of law it is clear that the Tribunal must come to a conclusion that the order of discharge or dismissal passed by the management was not justified. The word "justified" is a relative term which cannot be commonly used. Its interpretation varies according to the nature and depth of the offence committed by the concerned workman. The question is whether the order of dismissal passed by the disciplinary authority here is justified or not. It is the specific contention of the concerned workman that for his weak health he could not perform his duties normally and for which his production was not normal during the period from 17-3-92 to 18-4-92. It is not the case of the concerned workman that he did not attend his job during that period. On the contrary it is clear that he participated in 'go slow' work along with the drillmen/crew and for which production was lowered down very badly. It is clear that all the drillmen including the concerned workmen jointly decided to carry on 'go slow' work on an issue which can easily be negotiated with the management across the table. The plea taken by the concerned workman that he could not work normally due to his ill health is not at all tenable. There was scope on the part of the concerned workman either to take leave during this period or had the scope to submit petition before the management to provide him with light job due to his ill health. But he did not consider necessary to submit any such petition for consideration of the management. On

the contrary it is seen that the management provided him light job for one month immediately after his recovery considering his ill health. Therefore, there is no scope to say that the management did not show their good gesture towards the concerned workman sympathetically. No evidence on the part of the concerned workman is forthcoming that he tried his best to persuade other drillmen not to carry on go slow work during the period though it transpires that he had the leadership capacity of his own and the other drillmen were obedient to him. Had that been so in that case his genuinity would have been established. I have considered all the relevant papers carefully. I have sufficient reason to believe that the plea taken by the concerned workman about his ill health and the plea taken by him that he could not carry on normal production during this ill health is a camouflage only with a view to get rid of the punishment awarded by the management. As such considering all the circumstances carefully I hold that the management on just and proper ground dismissed the concerned workman from his service. There is no scope to say that the order of dismissal was passed by the management was in violation of the principles of natural justice. As such I did not find particularly in the instant case any cogent ground to re-consider the order of dismissal against the concerned workman. In the result the following Award is rendered —

The action of the management of Uranium Corporation of India Ltd in dismissing Shri Bamia Purty vide order dated 17-4-97 is justified. Consequently the concerned workman is not entitled to get any relief.

B BISWAS, Presiding Officer

नई दिल्ली, 2 अप्रैल, 2002

का.आ. 1417.—आद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार पारादीप पोर्ट ट्रस्ट के प्रबंधन व सत्रद निरोजको आर उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट आद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण भुवनेश्वर के पचाद को प्रकाशित करती है जो केन्द्रीय सरकार को 29-03-2002 को प्राप्त हुआ था।

[स एल०-38011/2/99-आई आर(एम)]

बी एम डेविड, अवर सचिव

New Delhi the 2nd April 2002

S.O. 1417.—In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref No 306/2001) of the Central Government Industrial Tribunal Bhabaneswar now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Paradip Port Trust and their workmen which was received by the Central Government on 29-03-2002.

[No L-38011/2/99-IR(M)]

B M DAVID Under Secy

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL—
CUM-LABOUR COURT BHUBANESWAR

Present

Shri S K Dhal OSJS (Sr Branch)
Presiding Officer C G I T -cum-Labour
Court Bhabaneswar

Tr INDUSTRIAL, DISPUTE CASE NO 306/2001

Date of conclusion of hearing —11th March 2002

Date of Passing Award—20th March, 2002

Between

The Management of the Chairman
Paradip Port Trust, Paradip
Jagatsinghpur—751001

1st Party—Workman

(And)

Their Workman represented
through The General secretary
Paradip Bandar Sramik Union
MA-121 Madhuban,
Jagatsinghpur—754142
APPEARANCES

2nd Party—Union

Shri A K Mohanty,
Legal Assistant Paradip
Port Trust

For the 1st Party—
Management

Shri Suresh Chandra Mohanty
Secretary Paradip Bandar
Sramik Union

For the 2nd Party—
Union

AWARD

The Govt of India Ministry of Labour in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act 1947 (14 of 1947) have referred the following dispute for adjudication vide Order No L-38011/2/99-IR (M) dated 26-11-1999

Whether the action of the Management of Paradip Port trust in supplying uniform instead of providing Union allowance from 1-1-1986 to 31-12-1999 is justified? If not to what relief the Staff Nurse are entitled?

2 The dispute is between the Chairman Paradip Port Trust (hereinafter called as the 1st Party Management) and the General Secretary Paradip Bandar Sramik Union (hereinafter called as the 2nd Party)

3 The case of the 2nd Party Union runs thus —

The employees who are concerned in this case are the Staff Nurses of the hospital of the 1st Party-Management. As per the decision the Staff Nurses were getting uniform allowance at the rate of Rs 125/- per annum. It continued till the year 1985. In the year 1986 the 1st Party-Management decided to provide uniform in lieu of paying uniform allowance. The Staff Nurses protested. So the dispute was raised and after failure of the reconciliation proceeding the present reference has been made.

The 1st Part-Management has filed their Written Statement. It has been pleaded by the 1st Part-Management that from the year 1981 to the year 1985 the Staff Nurses were paid uniform allowance at the rate of Rs 125/- per annum with the approval of the Board of Trustees vide Resolution dated 8-11-1971. But subsequently from the year 1986 it was decided to provide uniforms and so the uniforms are procured from

the year 1986 till 1991 But the Staff Nurses did not receive the same and claim uniform allowance in lieu of supply uniforms. The matter was placed before the Board and in the year 1993, it came for discussion before the Board in presence of the Union. In that Board it was decided that, the Staff Nurses will receive the uniform subject to condition that the quality of uniforms must be good. In that case it was decided that, the representative of the Staff Nurses will take part while selecting the products. So, according to the 1st Party-Management in view of that decision, the 2nd Party have got no case to demand for uniform allowance, but they should take the uniform.

5 On the pleadings of the parties, the following Issues have been settled

ISSUES

1 Whether the action of the Management of Paradip Port Trust in supplying uniform instead of providing uniform allowance from 1-1-1986 to 31-12-1999 is justified ?

2 If not, to what relief the Staff Nurses are entitled ?

6 Both the parties have declined to adduce oral evidence. They have argued their case basing on their documents.

FINDINGS

ISSUE NO. I

7 It is submitted on behalf of the 1st party-Management that, once decision has been taken in the year 1993, that, uniforms will be provided to the Staff Nurses in lieu of uniform allowance and that being accepted by the 2nd Party-Union now they can not raise any-grievance that the Staff Nurses are entitled for uniform allowance in lieu of uniform. On the other hand it has been contended on behalf of the 2nd Party-Union that, the decision was taken in the year 1993. That would work after 1993 but not before 1993. According to the 2nd Party-Union till 1992 no uniform allowance has been paid. Admittedly, no uniform allowance has been paid to the Staff Nurses. So, the 1st party-Management can not take the stand that, the decision taken in the year 1993 will have retrospective effect when there is no specific mention in the minutes of the year 1993.

8 Ext -1 is the memorandum dated 8-11-1971. The content of this Exhibit has not been disputed by the 1st party-Management. This Ext -1 reveals that, the uniform as prescribed will be supplied by the Port Trust to the concerned employees except in case of Staff Nurses. No dress will be supplied to the nurses and instead of uniform each of them will be paid a union allowance of Rs 125/- per annum. The 1st party-Management has admitted that according to this memorandum uniform allowance was being paid to the Staff Nurses till 1986. But in the year 1986, decision was taken to pay the uniform allowance.

9 According to the 1st Party-Management, on the strength of the Ext -A, the 1st Party-Management decided to pay the uniform instead of uniform allowance. I do not find any force in the contention made on behalf of the 1st Party-Management. Ext.-A has been exhibited on behalf of the 1st party-Management, which reveals that, the Management has decided to provide Uniform to the

Staff Nurses but from the year 1986 they have refused. So a memorandum was prepared to be placed before the Board for consideration. So, it can not be said that the memorandum which has been exhibited in this case as Ext-A is binding on the 2nd Party-Union particularly when it does not reveal that, the memorandum dated 8-11-1971 has been withdrawn. On the strength of the memorandum, dated 8-11-1971, (Ext -1) the Staff Nurses are entitled to get the uniform allowance. Unless that memorandum is withdrawn they are entitled to get the uniform allowance. In the year 1993, discussion was made in presence of the 2nd Party-Union and there it was decided that henceforth uniform will be provided to all the staff including the Staff Nurses in lieu of uniform allowance and the quality will be selected by the representative of the 1st party-Management and the Staff Nurse. The minute was recorded and that has been exhibited in this case as Ext-F. In para-2 of Ext.-F reveals the decision taken in this regard. For better appreciation it may be reproduced here.

“Accordingly the Issue was discussed with the Utkal Port & Dock Workers Union on 02-03-1993. The minutes of discussion is at Annexure-II. The Union Leaders and Nursing Staff have opined that they will have no objection for supply of uniform if quality products are supplied. On the issue, Chairman have allowed two Staff Nurses one of which would be Abala Dei, Staff Nurse to select the materials of the dress from Samples with Manager (Materials) before procurement of the Uniform. The Unions also demanded for supply of 54 Foot Wears. The same was also agreed to.”

10 It submitted on behalf of the 1st Party-Management that, once the 2nd Party has accepted the decision taken in the year 1993 that uniforms will be provided they can not claim uniform allowance from the year 1986. As I have stated, I do not find any merit in this contention. The decision, which was taken in the year 1993 as per Ext -F does not show that, the decision would have retrospective effect i.e. from the year 1986. In my opinion, the decision, which was taken as per Ext -F would work after 1993. So, the 1st Party-Management can not take the stand that in view of the decision as per Ext -F, the Staff Nurses are bound to take the uniform in lieu of uniform allowance. Because as per the memorandum, dated 8-11-1971 (Ext -1) the Staff Nurses are entitled to receive the uniform allowance instead of uniform. That memorandum was not withdrawn till 1993. So the Staff Nurses are entitled to get the uniform allowance. They can not be forced to take the uniform because there is no specific mention in the decision that was taken in the year 1993 (Ext -F) that it would have retrospective effect i.e. from the year 1986. Hence, this Issue is answered accordingly.

ISSUE NO. II

11 In course of the argument, it was submitted on behalf of the 2nd Party-Union that, though the reference has been made claiming uniform allowance from 1-1-1986 to 31-12-1999 they have received the uniform from 1993 on the strength of the memorandum as per Ext -F but they have not received the uniform allowance from the year 1986 to the year 1992. This position has also been admitted by the 1st Party-Management. So, in that case I am of the opinion that, the Staff Nurses are entitled to get the uniform allowance.

from the year 1-1-1986 to the year 1992. The refusal of the 1st party-Management to pay the uniform allowance for this period is not justified. In other words, the action of the 1st Party-Management in supplying the uniforms instead of uniform allowance is not justified.

12. The 1st party-Management has tried to convince this Tribunal that the reference is not maintainable being stale one. Reliance has been placed in the case of *M/s. Salimar Works Ltd.—Versus—Their workman in AIR 1959 SC 1217* and in the case of *Ajit Narayan Bhanja Deo.—Versus—Union of India & Others reported in 1992 (2001) CLT 258*. The position of law in this regard is not disputed. Though no period of limitation has been prescribed under the Industrial Dispute Act, the claim should be raised within the reasonable period. In the written Statement filed by the 1st Party-Management no specific plea has been taken that the reference is not maintainable being stale one. So now they can not take that stand. The decision was taken in the year 1993 and thereafter the dispute was raised and after failure of the reconciliation proceeding, the reference has been made. I do not find that, there was any negligence on the part of the 2nd party in raising the dispute. So, the submission made on behalf of the 1st Party-Management that the reference is not maintainable being stale one can not be accepted.

13. Reference is answered accordingly.

S. K. DHAL, Presiding Officer

नई दिल्ली, 2 अप्रैल, 2002

का.आ. 1418.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार इंडियन ऑयल कार्पो. लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद (संदर्भ सं. 52/2000) में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-03-2002 को प्राप्त हुआ था।

[सं. एल०-30012/33/2000-आई आर(एम)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 2nd April, 2002

S.O. 1418.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 52/2000) of the Central Government Industrial Tribunal Kanpur now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Indian Oil corpn. Ltd. and their workmen, which was received by the Central Government on 19-03-2002.

[No. L-30012/33/2000-IR(M)]

B. M. DAVID Under Secy.

ANNEXURE

BEFORE SRI R. P. PANDEY PRESIDING OFFICER
CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL -CUM-LABOUR COURT SARVODAYA
NAGAR, KANPUR

Industrial dispute No 52/2000

In the matter of dispute between

Indian Oil Pipeline Employees Association
The Joint Secretary
BKPL, District Chandauli
Mughalsarai

And

The General Manager,
Indian Oil Corporation Limited
Barauni Oil Refinery, Barauni
Begusarai, Bihar.

AWARD

1. Central Government Ministry of Labour vide its notification No. L-30012/33/2000/IR (M) dated 6-7-2000 has referred the following dispute for adjudication to this tribunal—

- a. Whether the action of the management of Barauni Kanpur Pipeline of Indian Oil Corporation in imposing the punishment of withholding of two increments on Sri Mohd. Isa Ansari and subsequently depriving the workman of his promotion is justified? If no, to what relief the workman is entitled?

2. The case of the workman as set up in the statement of claim is that Sri Isa Ansari the concerned workman was appointed as messenger in the year 1983 and in the year 1991 he was promoted as grade I chowkidar. He was due to get promotion on the higher post in the year 1997, but he was deprived from that promotion by the management without any valid reason and his junior Sri B. Jacob was given promotion on the post of cluster. It has been alleged that a false chargesheet was served on the concerned employee on 10-2-97 in which a charge was levelled against Sri Mohd. Isa Ansari that on 9-1-97 at about 6.30 A.M. he assaulted Ram Praveesh Singh with Lathi and when he fell down he tied his neck with his Mufler and later on with his belt on account of which he suffered injuries. The workman denied the charges and the management decided to hold a departmental enquiry against him. The enquiry was conducted by the enquiry officer who did not follow the principles of natural justice and did not give full opportunity to the delinquent employee to defend himself. The necessary documents on which the management relied were not furnished to the delinquent employee and the evidence of the witnesses was not correctly recorded. It has been alleged that although the concerned employee was beaten by the members of the rival unions but those persons were not punished and Mohd. Isa was falsely implicated in the case of assaulting Ram Praveesh Singh and enquiry officer has wrongly held him guilty for the same. It has been alleged that the disciplinary authority without application of mind has passed impugned order of punishment vide order dated 6-8-98. It has been alleged that the workman filed an appeal against that order but the appellate authority did not pay any heed to the request of the concerned employee and dismissed the appeal. Hence the industrial dispute has been raised on behalf of the concerned workman by the authorised union and the matter has been referred to this tribunal for adjudication. It has been prayed that that impugned order of punishment may be set aside and the concerned employee may be allowed increments, which have been withheld with cumulative effect by the disciplinary authority by way of order of punishment.

3. It has been also alleged that the concerned employee is also entitled to get promotion on the post of cluster, which has wrongly been denied, to him.

4. The management filed written statement with contention that Ram Pravesh Singh a co employee was beaten by Mohd. Isa Ansari on 9-1-97 at about 6.30 a.m. when he was going to fetch milk from near by village for the use in transit camp. It has been alleged that Mohd. Isa beat him with lathi on the knee and back and when he fell down Mohd. Isa tied his neck with muffler latter on tied his neck with his belt and the passer by saved Ram Pravesh from the clutches of Mohd. Isa Ansari. It has been alleged that Ram Pravesh Singh logged an FIR of the occurrence after the occurrence and got himself medically examined in the government hospital on the same day. It has also been alleged that he filed a complaint to the management also regarding the incident. It has been further alleged that he narrated the story of occurrence immediately after the occurrence to his colleagues who saw his injuries just after the occurrence. It has been alleged that the misconduct committed by Mohd. Isa Ansari was of serious nature hence a charge sheet was served on him and the enquiry was held by the enquiry officer as he had denied the charge. It has been alleged that the enquiry officer held the enquiry following principles of natural justice and all the witnesses were examined in the presence of concerned employee and he was given full opportunity to cross examine the witnesses. It has also been alleged that he was allowed to adduce evidence in defence but he did not adduce any evidence in his defence. It has further been alleged that the disciplinary authority gave a copy of the enquiry report to him before passing the impugned order of punishment but the concerned employee did not submit any explanation against the enquiry report and the impugned order of punishment dated 6-8-98 was passed by the disciplinary authority. It has also been alleged that the appellate authority rejected the appeal filed by the concerned workman because it was belated and the appellate authority found no substance in it. It has been alleged that in the year 1997 the concerned employee could not get promotion because disciplinary enquiry was pending against him and later on the punishment was imposed on him in the year 1998, which was in operation for two years during this period he also could not get promotion.

5. On behalf of the workman rejoinder has been filed in which the facts alleged in the statement of claim have been reiterated.

6. On the basis of pleading of this parties following preliminary issue was framed in the case.

Whether the domestic enquiry conducted by the management was fair and proper?

7. In this case the parties have filed documentary evidence to the domestic enquiry conducted against the concerned employee. The authorised representative for both the parties alleged that the documents filed by them may be exhibited and they did not adduce any oral evidence on the preliminary issue.

8. Although I heard the authorise representatives for the parties on the question whether the domestic enquiry conducted by the management was fair and proper or not, final award is being given instead of recording

finding only on the fairness of the domestic enquiry as ultimately I am going to hold that domestic enquiry conducted by the management was fair and proper and as in the present case punishment awarded to the delinquent employee is less than dismissal discharge or removal from service. hence this tribunal cannot interfere with the punishment awarded to the concerned workman in exercise of its power under section 11-A of the Industrial Disputes Act, 1947.

9. The authorised representative for the workman has argued that the disciplinary authority has not followed the principles of natural justice while holding the domestic enquiry against the delinquent employee. The papers relating to domestic enquiry are base on the oral as well as documentary evidence adduced by the management before the enquiry officer. The main charge against Sri Mohd. Isa Ansari, the concerned workman was that he had beaten Sri Ram Pravesh Singh on 9-1-97 at about 6.30 a.m. with lathi and danda on the knee as well as on his back and when he fell down he tied his neck with his muffler and later on with his own belt. The charge was fully supported by Ram Pravesh Singh who was examined as management witness before the enquiry officer. He was cross examined at length by the defence representative of the concerned workman but nothing has come his cross examination, which may discredit his testimony. His testimony is further supported by the copy of FIR, which was lodged by him at the police station after the occurrence in which Sri Isa, the concerned workman is mentioned person who had assaulted him with lathi and danda and has caused injuries to him Ram Pravesh Singh further lodged a written complaint to the management against Mohd. Isa, which also support the testimony of Ram Pravesh Singh. The injury report prepared by the Government medical officer also supports the testimony of Ram Pravesh Singh and proves the nature of injuries, which were suffered by him at the time of occurrence. Just after the occurrence Sri Ram Pravesh Singh met with his other colleagues who saw his injuries and Ram Pravesh Singh narrated to them that Mohd. Isa beat him. Those witnesses have also come before the enquiry officer and have supported the testimony of Ram Pravesh Singh to the extent they came to know about the occurrence and about the manner in which Mohd. Isa Ansari beat Sri Ram Pravesh Singh. The delinquent employee did not adduce any oral evidence in his defence. Even he could not dare to state on oath that he did not cause any injury to Ram Pravesh Singh on 9-1-97 at about 6.30 a.m. The delinquent employee filed a few documents, which have not been proved by him during the course of enquiry. In these circumstances the report of enquiry submitted by the enquiry officer holding Mohd. Isa guilty for causing injuries to Ram Pravesh Singh and for threatening him to kill him just after the occurrence appears to be supported by the evidence on the record and cannot be said to be perverse or without any evidence. I am, therefore, not prepared to believe the contention of the authorised representative for the workman that enquiry officer has held Mohd. Isa guilty for the charges levelled against him without any substantial evidence on record to prove that charge.

10. It has been contended on behalf of the workman that copies of the evidence on which the management relied were not furnished to him during the course of enquiry. I do not find any force in this contention. The written statement submitted by the concerned workman is at page

No. 114 of the compilation of documents filed by the management. In this written statement it has been alleged that Ram Pravesh Singh had written in his application dated 9-1-97 that Mohd. Isa Ansari had beaten him with lathi on his back. At page 115 of written statement the F.I.R. has been mentioned and objection has been raised about the contents of FIR. This shows that the documents on which management relied were in possession of the concerned employee and his defence representative and that was the reason that they have been able to raise objection regarding contents of the application of Ram Pravesh Singh and his FIR which were made just after the occurrence. It is notable that during the course of enquiry the defence representative did not make any application to the enquiry officer for furnishing copies of the documents on which management relied during the course of enquiry. When the disciplinary authority furnished the copy of enquiry report to the delinquent employee and asked to submit his explanation about the enquiry report the delinquent employee did not submit any explanation against the enquiry to the disciplinary authority. Had the enquiry officer violated the principles of natural justice and had he not furnished the copies of documents on which the management relied during the course of enquiry the delinquent employee must have raised the objection before the disciplinary authority regarding not furnishing the copies of documents by the enquiry officer and regarding violation of principles of natural justice by the enquiry officer. A copy of the appeal filed by the delinquent employee before the appellate authority is also on record. In that appeal also the delinquent employee did not raise any objection that copies of documents were not furnished to him during the course of enquiry. Had there been any truth in the contention of the workman that copies of the documents on which the management relied during the course of enquiry were not furnished he must have raised such objection before the disciplinary authority as well as appellate authority. In these circumstances the contention of the authorised representative for the workman regarding non-furnishing of the documents by the management appears to be after thought and is liable to be rejected. Had the documents on which management relied not been furnished to the delinquent employee he would not have been in position to raise objection regarding contents of those documents in his written statement submitted to the enquiry officer after the enquiry proceedings were over.

11. In view of finding recorded above I hold that domestic enquiry held against Mohd. Isa Ansari, the concerned employee was fairly and properly held and the enquiry officer did not violate the principles of natural justice at any stage in enquiry proceedings.

12. It has been contended in the statement of claim that the disciplinary authority has passed the impugned order of punishment dated 6-8-98 without applying his mind to the facts and the circumstances of the case and impugned order of punishment is illegal and is liable to be set aside. After going through the record of the case, I do not find any force in this contention. The disciplinary authority gave full opportunity to the delinquent employee to submit his representation against the report of enquiry officer but the delinquent employee did not submit any representation before the disciplinary authority against the enquiry report. The disciplinary authority agreed with the filing recorded by the enquiry officer and passed impugned punishment order. In these circumstances the

disciplinary authority was not expected to give reasons for holding the delinquent employee guilty of the charges as he agreed with the findings of the enquiry officer and adopted reasoning given by the enquiry officer in his enquiry report for holding the delinquent employee guilty of the charges. In State of Madras versus Srinivasan AIR 1966 SC 1827 the Hon'ble Supreme Court of India held that the disciplinary authority need not give reasons whenever he agrees with the report of enquiry officer. In these circumstances I do not find any fault in the impugned order passed by the disciplinary authority against the delinquent employee.

13. In view of finding recorded above I hold that the action of management of Barau Kanpur Pipe Line of Indian Oil Corporation in imposing the punishment of withholding of two increments on Sri Mohd. Isa Ansari is justified. The management is also held justified in not giving him promotion on the higher post on account of pendency of disciplinary proceedings and on account of punishment imposed on him as provided under relevant rules applicable to the employees of the Indian Oil Corporation.

14. Reference is answered accordingly.

R. P. PANDEY, Presiding Officer

नई दिल्ली, 2 अप्रैल, 2002

का.आ. 1419.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार कलकत्ता पोर्ट ट्रस्ट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण कलकत्ता के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 19-03-2002 को प्राप्त हुआ था।

[सं. एल०-30211/1/91-आई आर(एम)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 2nd April, 2002

S.O. 1419.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 20/1991) of the Central Government Industrial Tribunal/Kolkata now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Kolkata Port Trust and their workmen, which was received by the Central Government on 19-03-2002.

[No. L-32011/1/91-IR(M)]

B. M. DAVID, Under Secy.

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL
TRIBUNAL AT KOLKATA

Reference No. 20 of 1991

PARTIES : Employers in relation to the management
of Kolkata Port Trust.

AND

Their Workman

PRESENT

Mr Justice Bharat Prasad Sharma
Presiding Officer

9 Sankar Guha, Fitter —do—

10 Manoj Bhattacharjee,
ICE Fitter —do—

APPEARANCES

On behalf of the
Management

Mr G Mukhopadhyay,
Senior Labour Officer (Indus-
trial Relations)

On behalf of Workman

Mr S Chakraborty,
Secretary of the Union

State West Bengal Industry Port & Dock

Dated 8th March, 2002

AWARD

By Order No L-32011/1/91-IR (Misc) dated 09-07-1991 the Central Government in exercise of its powers under section 10(1) (d) and (2A) of the Industrial Disputes Act 1947 referred the following dispute to this tribunal for adjudication

“Whether the action of the management of Calcutta Port Trust in imposing punishment in reduction of pay by three (3) to five (5) stage for 2 (two) years with cumulative effect on the following employees is justified or not? If not, to what relief the concerned employees are entitled?”

Sl No	Name and Designation of the employees	Punishment imposed
1	Mukul Kr Ghosh, Elect & Gas Welder	Reduction of pay by 5 stages for 2 years with cumulative effect.
2	Gopal Mondal, Hammer Man	—do—
3	Siba Pr Biswas, I C E Fitter	Reduction of pay by 5 stages for 5 years with cumulative effect.
4	Satyandra Nag, Fitter	Reduction of pay by 3 stages for 2 years with cumulative effect
5	Saktipada Mazumdar, U S L	Reduction of pay by 3 stages for 2 years with cumulative effect.
6	Anath Bandhu Roy Chowdhuri I C E Fitter	Reduction of pay by 5 stages for 2 years with cumulative effect
7	Gopal Barman, Viceman	Reduction of pay by 3 stage for 2 years with cumulative effect
8	Gobinda Chakraborty Fitter	Reduction of pay by 5 stage for 2 years with cumulative effect

2 The dispute in the present case was raised on behalf of the Calcutta Port & Shore Mazdoor Union (CITU) on behalf of 10 workman, who were punished by the management of Calcutta Port Trust on the basis of a disciplinary enquiry held against them on some charge of misconduct

3 The Union had challenged the correctness and validity of the enquiry also which was refuted on behalf of the management and accordingly, the question of validity of the enquiry was heard as preliminary issue and finally an order in this regard was passed on 2nd August, 2001 by which it was held by this Tribunal that there was nothing to show that the enquiry was not valid and the enquiry could not be termed as violative of the principles of natural justice. However, the parties were directed to appear on a subsequent date and to make their submission, if they so desired, regarding the adequacy or otherwise of the punishment and, accordingly, the arguments of both the parties were heard.

4 So far as the charges against the concerned workmen are concerned, from Ext. M-3 it appears that the chargesheet was accompanied with the statement of articles of charges and imputation of misconduct. From this document it appears that the workmen had on 21-05-1987 obstructed the vigilance personnel and officials of the SRC Department from performing their official duty of checking attendance of the workers and punching cards by them at the time office near Gate No 8. It further appears that the workmen are said to have tried to create disturbance by closing the exit gate of the time office and to have threatened and abused the vigilance personnel by rising filthy language and they are also said to have manhandled and assaulted the vigilance staff, particularly one Tarun Chakraborty and thus according to the management they had acted in most irresponsible and indisciplined manner which amounted to serious misconduct. The charges were handover to concerned workmen and they were also subsequently directed to appear before the Enquiry Officer to defend themselves in course of the proceedings. In this regard it has been stated on behalf of this union that vigilance personnel were deputed by the management on being aggrieved against the raising of demands by the workmen and in order to harass them, false charges were levelled against them. It is, however, stated that while vigilance personnel visited No 8 workshop for the first time the workers and employees became annoyed to see the vigilance personnel deployed to check the attendance, but they extended their cooperation to the vigilance personnel apprised them of the difficulties they were facing. It is further stated that the vigilance personnel also assured them that they would bring the matter to the notice of the administration for remedy. However, after about a month the vigilance personnel again visited No 8 workshop with the purpose of checking the attendance of the workers and employees, but in the meanwhile no step was taken by the management to ameliorate their grievances and so there was a serious agitation of the workers and employees of No. 8 workshop who assembled in hundreds and protested against the deployment of vigilance personnel for checking attendance. It is further stated that workmen concerned had taken lead to control

the agitation of the workers and, therefore, to curb their activities the management suspended the workmen and started departmental proceeding as an eye-wash and with the intention to punish them. It has been denied on the behalf of the management in its written statement. It has been contended on behalf of the management that management has framed some rules, known as Calcutta Port Commissioner's Employees' (Discipline & Appeal) Rules, 1964 which was subsequently superseded by the Calcutta Port Trust Employees' Classification, Control and Appeal Regulations, 1987 for the purpose of maintaining and regulating discipline among the employees and the workmen are bound to act according to the Regulations. It is further stated that on 25-05-1987 at 4 P.M. some of the personnel from the Vigilance Dept. of the Board paid a visit to No. 8 workshop of the Mechanical Engineering Dept. to conduct surprise check on attendance and card punching of the employees at the time of the entry and exit at time-office. It is stated that at the material time the General Manager, Ship Repair Complex was the Head of the Dept. regarding workshop No. 8 which was subsequently brought under the control of the Chief Mechanical Engineer. It is further stated that on 25-05-1987, while checking of attendance and card punching of cards was being done by the vigilance personnel and the officers of the concerned department, they were prevented by a group of workmen attached to the workshop including the workmen concerned. It is further stated that these vigilance personnel were abused and threatened by these persons and one official was also physically manhandled and assaulted. It is also stated that the concerned workmen also stage a violent demonstration to prevent the vigilance persons and the officials of the Ship Repair Complex from discharging their official duty and 12 such persons were identified. So, all of them were placed under suspension and it was decided to initiate disciplinary proceeding against the concerned workmen for misconduct committed by them and accordingly a joint enquiry was ordered by the Deputy Chairman of the Board and one Shri B.N. Gupta, the Deputy Railway Manager was appointed as enquiry Officer and Shri T.K. Patil, Assistant Superintendent, Traffic was appointed as Presentation Officer. Thereafter the Enquiry Officer submitted a report on 31-1-1989 and the Chief Mechanical Engineer, being the disciplinary authority, considered the report of enquiry and passed the order awarding penalty on the concerned workmen in the nature of reduction of pay for a period of 2 years with cumulative effect. It is also stated that the stages of reduction varied from 3 to 5. It is stated that the concerned workmen then preferred appeal against the order of the Disciplinary Authority before the Deputy Chairman who also considered the appeal and rejected the same. It is also further stated that some of the workmen had preferred review petition to the Chairman of the Board and the same was also duly considered and rejected and thereafter the present dispute was raised.

5 In this background it has been stated on behalf of the management that so far as the action of the workmen is concerned, it is clear that it was a serious kind of disorderly behaviour which is practically admitted in the written statement of the union itself where it has been stated that when the workmen saw the vigilance staff they became agitated and it has been clearly stated in the written statement of the union that when on the second occasion the vigilance personnel arrived for checking the

attendance, the workmen became agitated and they prevented them from doing it and they also started agitation. Therefore, it is submitted on behalf of management that for the purpose of maintaining discipline in the industry it becomes absolutely essential for the management to take action against the workmen and action was also not taken in arbitrary manner; rather, the chargesheets were properly issued and the workmen concerned were given opportunity to defend themselves before the enquiry Officer in course of the enquiry. The Enquiry Officer also being fully satisfied with the materials before him opined that the charges were established against the workmen concerned and on its basis the punishment has been awarded. It is submitted that the punishment is to the effect of withholding the increments between 3 to 5 stages for the 2 to 5 years and the punishment considering the nature of charge cannot be said to be harsh or disproportionate to the charge. Therefore, it has been submitted that there does not appear to be any justification to interfere with the punishment. On the other hand, it has been submitted on behalf of the union that from the pleadings on behalf of the union it appears that the workmen had certain grievance regarding some difficulties being faced by them and it was not being removed inspite of their being raised before the management and since the workmen were raising the grievance before the management in which the concerned workmen were taking lead they were selected by the management and have been victimised in the present case. Therefore, it has been submitted that the punishment imposed on them hits the workers hard so far as their financial condition is concerned and, therefore, it has been submitted that the punishment is required to be quashed or at least reduces. In this regard it may be said that even if the workmen had any grievance regarding any difficulty being faced by them, they were supposed to raise their grievance before the management in a disciplined and peaceful manner and it should have been ventilated before the management through their union, but it does not appear to have been done. There is no material to show that any such grievance was raised before the management by the union in proper manner and the workmen were never justified in acting violently in obstructing and attacking the vigilance personnel when they were making checks of the attendance and departure of the workmen. This conduct of the workmen can simply be termed as rowdism and gross indiscipline which is a misconduct and for the purpose of maintaining discipline in the industry, the punishment in legal manner appears to be essential.

6. In this view of the matter, I do not find that the punishment is in any way harsh or unconscionable or disproportionate to the charges levelled against the workmen concerned and there does not appear to be any reason to interfere with the punishment. The prayer of the workmen is therefore refused and rejected. The workmen do not deserve any consideration and they are not entitled to any relief whatsoever.

7 Accordingly the reference is decided and disposed of.

Dated, Kolkata, B.P. SHARMA, Presiding Officer
The 8th March, 2002

नई दिल्ली, 2 अप्रैल, 2002

का.आ. 1420.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बाबा रामदेव मार्बल्स के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय जयपुर के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-3-2002 को प्राप्त हुआ था।

[सं. एल-29012/42/99-आई आर (एम)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 2nd April, 2002

S.O. 1420.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Jaipur as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management BABA RAMDEV MARBLES and their workmen, which was received by the Central Government on 29-3-2002.

[No. L-29012/42/99-IR(M)]

B.M. DAVID, Under Secy.

अनुबन्ध

न्यायालय : न्यायाधीश, औद्योगिक विवाद अधिकरण एवं श्रम न्यायालय, उदयपुर

पीठासीन अधिकारी : श्री पी. एन. खण्डेलवाल, आर एच जे एस

औद्योगिक विवाद संख्या 12/99

अध्यक्ष. खदान मजदूर यूनियन, 23 अश्विनी बाजार, उदयपुर

.....प्रार्थी

बनाम

बाबा रामदेव मार्बल्स, मसारो की ओवरी वाया ऋषभदेव तह. खेरवाड़ा जिला उदयपुर

.....विपक्षी

उपस्थित :—

श्री रमेश नन्दवाना : प्रार्थी की ओर से

विपक्ष की ओर से : कोई उपस्थित नहीं

पंचाट

दिनांक 15-2-2002

भारत सरकार के श्रम विभाग द्वारा जरिये पत्र क्रमांक एल-29012/42/99- आई आर-(एम) दि. 15-9-99 द्वारा निम्न आशय का प्रसंग इस न्यायालय को प्रेषित किया गया।

“क्या बाबा रामदेव ग्रीन मार्बल्स जिला उदयपुर के प्रबंधन द्वारा श्री कावाराम पुत्र श्री खतराजी मीणा को दि. 26-4-98 से सेवा पृथक किया जाना उचित एवं वैध है? यदि नहीं तो श्रमिक किस राहत को पाने का अधिकारी है?”

उक्त आशय का प्रसंग प्राप्त होने पर न्यायालय द्वारा दि. 16-12-99 को दर्ज रजि. किया जाकर पक्षकारों को नोटिस जारी किये गये। जिस पर प्रार्थी की ओर से क्लेम पेश किया गया।

संक्षेप में प्रार्थना पत्र के तथ्य इस प्रकार हैं कि प्रार्थी विपक्षी के प्रतिष्ठान में 10 वर्ष से सेवाएं देता आ रहा था तथा प्रार्थी का कार्य भी काफी संतोषजनक रहा। विपक्षी ने प्रार्थी की सेवाएं अचानक बिना किसी सूचना के खत्म कर दी जिससे प्रार्थी पूर्णतया बेरोजगार हो गया है। विपक्षी ने प्रार्थी को सेवा से पृथक करने के बाद दूसरे मजदूरों को रखा जो अभी भी उक्त खदान पर कार्य कर रहे हैं। सेवा से पृथक करने से पूर्व न तो नोटिस दिया न नोटिस पे व न ही सेवानिवृत्त लाभों का भुगतान किया गया। अतः सेवानिवृत्त को अवैध कर दिया जाकर पुनः सेवा में लिया जाकर समस्त सेवा लाभ प्रदान कराये जाये।

क्लेम प्रस्तुत होने पर विपक्षी को रजिस्टर्ड डाक से नोटिस भेजा गया लेकिन नोटिस बाद तामील या अदम तामील के नहीं लौटने पर पर्याप्त तामील मानी जाकर उसके विरुद्ध दि. 8-1-2002 को एक पक्षीय कार्यवाही की गई।

प्रार्थी ने अपने प्रार्थना पत्र के समर्थन में स्वयं का शपथपत्र प्रस्तुत किया। विपक्षी के उपस्थित नहीं होने से प्रार्थी से प्रतिपरीक्षण नहीं किया जा सका।

न्यायालय द्वारा सम्पूर्ण तथ्यों का अवलोकन किया जाकर प्रार्थी प्रतिनिधि की बहस सुनी गई जिसमें लगभग उन्हीं तथ्यों का विस्तार के साथ उल्लेख किया गया जिनका उल्लेख क्लेम में किया गया है। सभी परिस्थितियों पर विचार करने के उपरांत यह देखना है कि इस प्रकरण में किस आशय का अवार्ड पारित किया जाना चाहिये।

प्रार्थी ने अपने शपथ पत्र में प्रार्थना में अंकित तथ्यों का ही समर्थन किया है। विपक्षी की ओर से न जवाब पेश किया गया है न ही शपथ पत्र पेश किया है। ऐसी स्थिति में प्रार्थी के शपथ पत्र व प्रार्थना पत्र में अंकित तथ्यों को नहीं मानने का कोई कारण प्रतीत नहीं होता है। अतः प्रार्थी का यह आवेदन स्वीकार किये जाने योग्य है। तदनुसार यह विवाद अधिनिर्णीत किया जाता है।

बाबा रामदेव ग्रीन मार्बल्स जिला उदयपुर के प्रबंधन द्वारा प्रार्थी कावाराम पुत्र श्री खतराजी मीणा को दि. 26-4-98 से सेवा पृथक किया जाना उचित एवं वैध नहीं है। अतः इस आशय का पंचाट पारित किया जाता है कि प्रार्थी को सम्पूर्ण वेतन व अन्य परिलाभ सहित पुनः सेवा में पंचाट प्रकाशित किये जाने की तिथि से एक माह के अंदर दैनिक वेतन भोगी श्रमिक के रूप में वर्तमान में प्रचलित दर पर पदस्थापित किया जाए। पंचाट प्रकाशनार्थ भारत सरकार को भेजा जाए।

पंचाट आज दिनांक 15-2-2002 को खुले न्यायालय में लिखाया जाकर सुनाया गया।

पी. एन. खण्डेलवाल, न्यायाधीश

नई दिल्ली, 2 अप्रैल, 2002

का.आ. 1421.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ऑयल इंडिया लि. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में श्रम न्यायालय गुवाहाटी के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 29-3-02 को प्राप्त हुआ था।

[सं. एल-30011/67/99-IR(M)]

बी. एम. डेविड, अवर सचिव

New Delhi, the 2nd April, 2002

S.O. 1421.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal, Guwahati as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management OIL INDIA LTD. and their workmen, which was received by the Central Government on 29-3-02.

[No. L-30011/67/99-IR(M)]

B.M. DAVID, Under Secy.

ANNEXURE

IN THE INDUSTRIAL TRIBUNAL : GUWAHATI : ASSAM

REFERENCE NO. 5(C) OF 2000.

Present : Shri K. Sarma, L.L.B.,
Presiding Officer,
Industrial Tribunal, Guwahati.

In the matter of an Industrial
Dispute between :

The Management of Oil India Ltd.,
Duliajan.

2. The Regional Provident Fund
Commissioner.

-Versus-

Their workmen represented by
General Secy., Oil India Workers
Association, Duliajan.

Date of Award : 7-3-2002.

AWARD

This Industrial Dispute has been referred to by the Govt. of India, Ministry of Labour vide order No.L-30011/67/99-IR(M) dt. 29-2-2000 under section 10 of the I.D. Act to adjudicate the dispute arising between the Management of Oil India Ltd., Duliajan and their workmen on the following issue :

“Whether the action of the management of Oil India Ltd., Duliajan in deducting 9% contribution from the salary of the employees without obtaining the approval/exemption under Section 39 of EPS’ 95 as contemplated in the bi-partite agreement with the

recognised union is justified keeping in view the provisions of section 9-A of the Industrial Disputes Act, 1947. If not, to what relief the employees are entitled to ?”

On receipt of reference, this tribunal has registered this case and issued notices to both the parties calling upon them to file their written statement/addl. written statement and documents, if any in response to which the management and the 4 union arising this industrial dispute have filed their written statement/addl. written statement and documents. Both the parties have adduced their oral evidence in support of their respective contentions, apart from the documentary evidence filed by them. After recording evidence, I have heard the arguments advanced by the learned advocates for both the parties.

The fact of the case as in reflected from the materials on record is that 4 registered Trade Unions, but not the majority union recognised by the management, have raised this industrial dispute against the management of Oil India Ltd., Duliajan for deduction of 9% contribution subsequently 8.33% from the salary of the employees for the purpose of forming of pension scheme for employees without obtaining approval from the Central Govt. under para 39 of the employee pension scheme. According to union the employees are entitled to have their pension in accordance with the provision of Employees Pension Scheme, 1995 formed by the Govt. of India in exercise of power under section 6(A) of the Employees’ Provident Funds and Miscellaneous provisions Act, 1952. Para 39 of the said scheme provide that the appropriate Govt. may grant exemption to any establishment, class of establishment from the operation of the scheme, if the employees of the establishment propose to be member of the other pension scheme wherein the pensionary benefit are at par or more favourable than the benefit provided under the scheme. The management of Oil India Ltd., accordingly entered into bi-partite settlement with co-ordination committee of India Oil Workers Union (I.O.W.U.), a majority recognised union by the management formed a pension scheme and sought for exemption from the Central Govt. from the Employees Provident Fund Scheme, 1995 under para 39 of the said scheme. The unions raising this industrial dispute have contended that 80% of the workers have raised objection against the introduction of the new scheme as the same is not at par or more favourable than the benefit provided under the Govt. scheme and opposed the scheme by filing representation before the management. As the management has not listened to the grievances of the union, they approach the concerned labour authority raising this industrial dispute. The labour authority also having failed to settle the matter amicably on conciliation have referred the matter to the appropriate Govt. who ultimately made this reference to this tribunal.

The main contention of the workmen is that deduction of 8.33% of the salary to the inner house pension scheme by the management without exemption granted by the Central Govt. under para 39 of the scheme constitute change of condition of service and hence it is violative to Sec. 9-A of the I.D. Act.

The management’s contention in that the present dispute raised by the unions which are not majority recognised unions by the management is not an industrial dispute and hence it is beyond the adjudicatory power of

this tribunal. The management has further contended that before coming into force of the Employees Pension Scheme, 1995 (hereinafter referred to as "EPS, 95") there was a scheme called "Employees Family Pension Scheme, 1971". As per the provisions of that scheme 1 1/6% of pay out of the employees contribution to Provident Fund and also 1 1/6% of pay out of the employee's contribution to Provident Fund was required to be diverted to the Pension Fund. The Company was complying with the said scheme since 1971 remitting regularly the contribution to the Regional Provident Fund Commissioner. In the year 1995 an Ordinance was issued by the Central Government regarding formulation of the pension scheme superseding erstwhile Employees Family Pension Scheme, 1971. The said Ordinance was challenged in various High Courts all over India and there was stay orders issued by various High Courts for which the Central Government, itself, did not implement the said Ordinance. Thereafter, in the year 1996 the Government of India amended the Employees Provident Fund and Miscellaneous Provision Act, 1952 wherein a scheme was introduced, namely Employees Pension Scheme, 1995. The said scheme was given retrospective effect from 16-11-1995. By the said Amendment, the Central Government has repealed the Employees Family Pension Scheme, 1971, with effect from 16-11-1995. The management was also accordingly complied with said scheme of 1971 remitting regularly the contribution to the Regional Provident Fund, Commissioner. But in the year 1995 an ordinance was issued by the Central Govt. regarding formulation of the pension scheme called Inner house pension scheme. The management accordingly entered into bi-partite settlement with members of co-ordination committee of majority recognised union have framed trust with the representation of the employees and have made deduction of 9% from their salary and subsequently 8.33% giving some other benefit to the workmen and had submitted this scheme to the Central Govt. for granting exemption under para 39 of the said scheme. The Central Govt. have initially rejected the scheme and returned to the management for resubmission for exemption suggesting certain modification. The management accordingly after effecting modification have submitted the scheme to the Central Govt. for necessary approval under para 39 of the scheme which is still pending.

Management another contention is that as deduction of the 8.33% from the salary of the workmen to the pension scheme was made after entering into bi-partite settlement with co-ordination committee of majority recognised union and applied for exemption under para 39 E.P.S., 1995 which is pending before the appropriate authority, it does not amount to violation of service condition and hence Sec. 9(A) of the I.D. Act is not attracted. Management further contention is that Sec. 9-A of the I.D. Act restrict the right of the employer to make any change in the condition of service applicable to any workmen in respect of any matter pacified in schedule IV without giving to the workmen likely to be affected a notice of change or within 21 days of giving such notice. The change contemplated by Sec. 9-A is one which the employer has violated into make or not to make. But is the Employer is compelled to give affect to any statutory rule or order which has itself brought about the change in the terms of employment, such a change would not come within the Sec. 9(A) of the I.D. Act.

From the perusal of the aforesaid materials on record and also the terms of reference referred to by the appropriate Govt. for adjudication of matter in controversy between the parties, I find that the point to be decided is whether the action of the management by deducting 8.33% salary of the employee to the E.P.S. is arbitrary on the part of the management or it is in accordance with statutory provision and with the consent of the majority union and whether it is violative to Sec. 9-A of the I.D. Act. From the pleadings filed by the parties, I find that E.P.S. was introduced by the management in the year 1995 as per introduction of the pension scheme as the present social security measures available to the employees have been found inadequate, for they do not provide for monthly pension to members on superannuation, widow pension on death of employee after superannuation, children pension, or disablement benefits. To fill these lacuane in the existing system, the Employees Provident Funds and Miscellaneous Provision (Amendment) Ordinance, 1995 was promulgated by the President of India, dated 5-1-1996, amending the Act with effect from 16-11-95 conferring power upon the Central Govt. to frame a suitable pension scheme incorporating provisions for superannuation pension, retiring pension or permanent disablement pension to employees to which the Act applies, and widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees in the event of death. In exercise of this power, the Central Government framed the E.P.S., 1995 providing for the aforesaid benefits effective from the date on which the Ordinance commenced, repealing and replacing the Family Pension Scheme, 1971 framed under the existing provisions. As the Parliament was not in session to enact the said ordinance, the same was repealed by the Employees Provident Funds and Misc. Provisions (Amendment) Second Ordinance of 1996 dated 27-3-1996, with effect from 16-11-1995 which was again replaced by the Third Ordinance of 1996. This Ordinance has been replaced by the present Employees Provident Funds and Misc. Provisions (Amendment) Act, 1996 with retrospective effect from 16-11-1995. The new pension scheme thereunder shall apply to all employee who were covered by the Family Pension Scheme and also to new members. Purpose of introduction of the scheme is to provide for better financial securities to the employees after retirement so that they can get the pension money easily. Introduction of the scheme has also been made by the management as per statutory provision arising out of amendment of Employee Family Pension Scheme by an ordinance issued by the Central Govt. formulating employees pension scheme supersiding Employees Pension Scheme of 1971. Before introducing this scheme, the management has entered into bi-partite settlement with the members of the co-ordination committee of the majority recognised union and also created a trust formulating guidelines for investment of money so collected. Only statutory obligation is that the management has to obtain exemption from the Central Govt. for deduction of money to the own scheme from the Govt. pension scheme. The para 39 runs as follows :

"Exemption from the operation of the Pension Scheme—The appropriate Government may grant exemption to any establishment or class establishment from the operation of this scheme, if the employees of the establishments are either members of any other Pension Scheme or propose to be members of a Pension Scheme wherein the pensionary benefits are at par or more favourable than the benefits provided under this Scheme.

Where exemption is granted to any establishment or class of establishments under this paragraph, withdrawal benefits available to the credit of the employees of such establishment(s) under the ceased Family Pension Scheme, 1971 shall be paid subject to the consent of the employees, to the Pension Fund of the establishment(s) so exempted. An application for exemption under this paragraph shall be presented to the Regional Provident Fund Commissioner having jurisdiction by the establishment or class of establishments together with a copy of the Pension Scheme of the establishment(s) and other relevant documents as may be called for by him. On receipt of such an application, the Regional Provident Fund Commissioner shall scrutinise it, obtain the recommendations of the Central Provident Fund Commissioner and submit the same to the appropriate Government for decision. Pending disposal of application for exemption under this paragraph, employers' share of the contribution shall not be remitted to the Pension Fund as envisaged in sub-paragraph (1) of Paragraph (3). An application for exemption presented under this paragraph shall be disposed of within a period of six months from the date of this receipt or such further time as may be extended for reasons to be recorded in writing. If the application for exemption is not disposed of within the period so specified, the exemption applied for shall be deemed to have been granted.

As per aforesaid provision of law, the management has submitted the scheme to the Central Govt for granting exemption. This provision of law provided that even exemption can be sought for after introducing the scheme. If the appropriate authority has not granted exemption within the period so specified exemption shall be deemed to have been granted. If exemption is totally refused the management has to remit the amount so collected to the Govt. But as per said provision of law, so long the petition for exemption is pending, the amounts so collected should not be remitted to the Govt pension scheme and should be retained by the company in their scheme. In the instant case, from the materials on record, I find that the company written for exemption to the Central Govt through the Regional Provident Fund Commissioner and at first time scheme was returned to the company without granting exemption for resubmission after necessary modification. In the evidence of M W 1 Chief Financial Manager, I find that scheme was resubmitted to the management after necessary modification which is still pending. This aspect of the case that the scheme is pending for exemption has also been supported by the W W 9, S D Sing, Asstt Provident Fund Commissioner who has stated in the cross-examination that the petition for exemption under para 39 of E.P.S. 1995 has been pending before the appropriate authority. It is also found in his evidence that till petition for exemption is disposed, the money collected should be retained in the company scheme. In the evidence of M W 1, Chief Financial Manager I find that he has pacifically stated that if any of the employee wants to withdraw the amount deposited in the scheme and prefers to transfer the same to the Govt pension scheme the path is open for them to do so and accordingly in the evidence of the workmen I find that some of the workmen who have raised claim pension for family pension in time, same was paid to them without harassment and anybody who wants to divert the fund to Govt pension scheme they are allowed to do it. This aspect of the case has made it clear that introduction of the scheme has not caused any harassment

to the workmen nor they are debarred from diverting their fund to Govt pension scheme from the company fund. As the workmen can easily get the pension money from the company pension scheme with the same benefit that he or she can get from the Govt pension scheme, this scheme introduced by the company can be said to be more beneficial to them.

So far as the question raised in terms of the reference as to violation of Sec 9-A of the I D Act is concerned, I find that deduction has been made as per consent of the majority recognised union. The consent of the majority recognised union amounts to consent of all the workmen and hence question of obtaining individual consent from each of the workmen does not arise. The four unions raising this industrial dispute are not the majority recognised union nor they can establish that introduction of the scheme has caused any harassment to them nor it has changed the condition of service violating Sec 9-A of I D Act. Moreover, the settlement arrived at between the management and the co-ordination committee majority recognised union has not been challenged in any court of law by the union raising this industrial dispute and hence it can not be said that it is not binding on them. The contention of the workmen that inner house pension scheme is not applicable to the contract labour. But as the scheme has been submitted to the appropriate authority for granting exemption, the appropriate authority, at the time of granting exemption in definitely look into matter whether the scheme has deprived any section of the workmen seeking financial security after retirement or not. Moreover, management has submitted that the contract labour who are the members of company provident fund are also covered by inner house pension scheme. So far as change of service condition by violating section 9-A of I D Act is concerned, the management has drawn my attention to 1982 LAB IC 1435 para 6. Relevant para is as follows:

"The management begs to state that section 9-A of I D Act restricts the rights of an employer to make any change in the conditions of service applicable to any workmen in respect of any matter specified in the IV schedule without giving to the workmen likely to be affected a notice of change or within 21 days of giving such notice. The change contemplated by section 9-A is one which the employer has violation to make or not to make. But if the employer is compelled to give effect to any statutory Rule or order which has itself brought the change in the terms of employment, such a change would not come within the ambit of Section 9-A."

In view of the aforesaid position of law and fact and the circumstances of the case, I find that action of the management deducting 8.33% of the salary of the employee to E.P.S. 1995 is not violative to Sec 9-A of the I D Act as it has not changed the condition of service because such deduction is made after bi-partite settlement entered into with a majority union also by giving effect to the statutory provision of law framed by the Central Govt. But, if the appropriate authority refuses exemption, the management shall have to divert the amount so collected to the Govt pension scheme. Again if any of the employees wants to divert the amount to the Govt pension scheme, he or she shall be allowed to do it.

With this direction this reference is answered in favour of the management. Prepare an award accordingly.

K. SARMA, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1422.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी बी एम बी के प्रबंधन के सबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ़ के पचाट (सदर्भ संख्या 175/90) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-4-2002 को प्राप्त हुआ था।

[स एल-42012/3/90-आई आर (डी यू)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 3rd April, 2002

S.O. 1422.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref No 175/90) of the Central Government Industrial Tribunal/Labour Court, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of BBMB and their workmen, which was received by the Central Government on 3-4-2002

[No L-42012/3/90-IR(DU)]
KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE SHRI S M GOEL, PRESIDING
OFFICER, CENTRAL GOVT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
CHANDIGARH

Case No ID 175 of 1990

General Secretary Nangal Bhakra Mazdoor Sangh,
Head Office, Nangal Township, Distt Ropar(PB)-
140124

Petitioner

VS

Chief Engineer, Bhakra Dam, Nangal Township, Distt
Ropar-140124 Respondent

Representatives :

For the workmen Sh R K Singh
For the management Sh R C Sharda

AWARD

(Passed on 6-3-2002)

The Central Govt Ministry of Labour vide Notification No L-42012/3/90-IR (DU) dated 9th November 1990 has referred the following dispute to this Tribunal for adjudication

“Whether the action of the management of the B B M B rep through the Chief Engineer Bhakra Dam, Nangal, Irrigation Wing in terminating the services of Shri Som Nath skilled Labour w e f 1-10-87 is justified? If not to what relief the workman is entitled to and from what date?”

2 The applicant in claim statement has pleaded that he was deputed to work as skilled labourer/

regulation beldar in Hydrology sub-division from 2-7-1984 to 14-10-1984, 4-7-85 to 14-10-1985, 26-6-86 to 30-9-86 and 25-6-87 to 30-9-87 After 30-9-87 he was not called for the re-employment It is alleged that he had completed more than 240 days of service from 2-7-1984 to 30-9-1987 New hands were recruited by the management namely Ravinder Kumar Chaman Lal, Pradeep Kumar and one Shri Vijay Kumar after termination of his services The applicant has prayed that he be reinstated in service with full backwages

3 In written statement the management has admitted that the applicant was employed for the period claimed by the applicant and he was recruited through the employment exchange But it is pleaded by the management that he was employed for specific period as per the terms and conditions of the appointment letter and the services of the applicant came to an end after the expiry of specified period Regarding the persons employed after his termination, in fact Ravinder Kumar son of Chuhan Singh is a regular employee since 2-11-1986 Chaman Lal son of Roshan Lal is also regular employee since 21-10-1985 and Pardeep Kumar and Vijay Kumar was deployed for the specific period The seniority is maintained as per the policy instructions framed by the BBMB Hence there is no violation of Section 25-H of the ID Act 1947

4 Replication was also filed by the applicant reiterating the claim made in the claim statement

5 It is admitted that the workman had worked from 2-7-84 to 14-10-1984 4-7-85 to 14-10-85, 26-6-86 to 30-9-86 and from 25-6-87 to 30-9-1987 The workman in his evidence had produced his affidavit E\ W1 stating the said facts He has also relied on the documents E\ W2 the certificate given by the S D O concerned regarding his work and conduct during the said period He has also relied on E\ W3 which are the proceedings before the A L C and E\ W4 the failure report of the A L C In support of his claim the applicant has also stated that he had worked for more than 240 days from the period 2-7-1984 to 30-9-1987 He has also stated that the management did not maintain any seniority list before effecting his termination Juniors were also retained It was also stated that in the affidavit filed by the workman that the management had recruited persons from the open market and their names are Ravinder Kumar, Chaman Lal Pardeep Kumar The workman Som Nath was also cross-examined by the rep of the management To refute the allegations of the workman the management examined Jarnail Singh and Avinash chander Jarnail Singh also filed his affidavit E\ M1 and the documents E\ M2 to E\ M4 and has stated that petitioner had been employed through employment exchange for specific period only Avinash Chander another witness of the management has proved his affidavit E\ M5 and he has also produced documents E\ M6 and M7 In their evidence Jarnail Singh and Avinash Chand have stated that only during the rainy season Som Nath was employed for a specific period The same fact was stated by Avinash Chander in his affidavit He has also stated that as per the decision of the B B M B for the absorption of workcharged and contingent paid employees of the BCB in BBMB fresh appointments of Girdhari Lal a retrenchee of BCB was made and no junior had been retained

6 I have considered the evidence on record both oral and documentary and have heard the submissions made by the learned representatives of the parties.

7 The learned representative of the management has relied on *Morinda Co Op Sugar Mills Ltd Vs Ram Kishan and others* FJR (88) S C page 4. In this case law the Hon'ble Supreme Court has held that it was only seasonal work. The respondent can not be said to have been retrenched on their employment ceasing on the closure of the season in view of clause (bb) of Section 2(oo) of the Industrial Disputes Act, 1947. In this case law the Hon'ble Supreme Court has directed to maintain a register for all workmen who had been engaged during the season and when the new season started, the management should make a publication in the neighbourhood in which the respondent normally lived and if they should report for duty to engage them in accordance with their seniority and exigency of work.

8 The learned representative of the workman has argued that the management had not called the workman later on. On the other hand the rep. of the management cited two judgements of the case No. ID 176/90 decided on 22-1-2001 *Sagli Ram Vs BBMB* by Sri B. L. Jatav and another case I.D. No. 39/87 *Raj Rani Vs BBMB* decided by Shri S. R. Bansal on 13th of December 1995 in which it has been held that it is not retrenchment and the workman is not entitled to any relief. In these two judgements there is no mention of the judgement of the Hon'ble Supreme Court as detailed above.

9 I have considered the arguments of the learned representatives of the parties and have gone through the judgements as stated above and having gone through the judgement of the Hon'ble Supreme Court as stated above, retrenchment of the workman is not there if the appointment of the workman is for specified period. Section 2(oo)(bb) is very clear on this situation. The Hon'ble Supreme Court has held that in such cases, there is no retrenchment, however it has given a direction to maintain a register and to give employment to the persons who had worked earlier, if they report for duty in pursuance of a notification.

10 Accordingly, I find no force in the case of the workman. In my opinion, he has been rightly terminated because his appointment was for a specific period as is clear from Ex. M4. However, following the case law of the Hon'ble Supreme Court, I may direct the management to make a publication in the neighbourhood in which such workman normally live and if they shall present themselves for duty, to engage them in accordance with the seniority and exigency of work and for that they should also maintain a register for all such workman. This direction may be followed in future. The reference is answered accordingly. Central Govt. be informed.

Chandigarh

6-3-2002

S. M. GOEL, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1423.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूरसंचार विभाग

के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चण्डीगढ़ के पंचाट (संदर्भ संख्या 397/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-4-2002 को प्राप्त हुआ था।

[सं. एल-40012/315/2000-आई. आर. (डी. यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 3rd April, 2002

S.O. 1423.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 397/2000) of the Central Government Industrial Tribunal/Labour Court Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Telecom Deptt. and their workmen, which was received by the Central Government on 3-4-2002.

[No. L-40012/315/2000-IR(DU)]
KULDIP RAI VERMA, Desk Officer

ANNEXURE

IN THE COURT OF SH. S. M. GOEL, PRESIDING
OFFICER, CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT,
CHANDIGARH

Ref. No. ID No. 397 of 2000

Sh. Harsewak Singh S/o Workman
Sh. Sadhu Singh
H No. 1390, Phase 3-B-II,
Mohali (PB.)

Versus

General Manager Telecom Management
Sector-18, Chandigarh.

Present :
For the workman None
For the Management Sh. G. C. Babbar

AWARD Dated 26-2-2002

The Central Govt. Ministry of Labour in exercise of powers conferred on them under Section 10(1)(d) and Sub-section (2-A) of Section 10 of the Industrial Disputes Act 1947 (hereinafter referred as the Act), vide their letter No. L-40012/315/2000 /IR (DU) dated 28-9-2000 referred the following Industrial dispute to this Tribunal —

“Whether the action of the management of General Manager Telecom Chd. in terminating the services of Sh. Harsewak Singh S/o Sh. Sadhu Singh is just and Legal? If not, to what relief the workman is entitled and from which date?”

None appeared on behalf of the workman despite notice. It appears that workman is not interested to pursue with the present reference. In view of the above, the present reference is returned to the Central Govt.

for want of prosecution. Central Govt. be informed.

Dated : 26-2-2002. S.M. GOEL, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1424.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाक विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चण्डीगढ़ के पंचाट (संदर्भ संख्या 237/99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-4-2002 को प्राप्त हुआ था।

[सं. एल. 40012/250/99-आई. आर. (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 3rd April, 2002

S.O. 1424.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 237/99) of the Central Government Industrial Tribunal/Labour Court, Chandigarh now as shown in the Annexure in the Industrial Disputes between the employers in relation to the management of Postal Deptt. and their workman, which was received by the Central Government on 3-4-2002.

[No. L-40012/250/99-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

IN THE COURT OF SH S.M. GOEL, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH.

Ref. No. I.D. No. 237/99

Krishan Kumar	:	Workman
Versus	:	
Post Office	:	Management
Present : For the workman	:	None
For the Management	:	D. P. Singh

AWARD

(Dated 26th of February, 2002)

The Central Govt. Ministry of Labour in exercise of its power conferred under Section 10 (1)(d) and Sub-section 2-A of Section 10 of the Industrial Disputes Act 1947 (hereinafter referred as the Act), vide their Letter No. L-40012/250/99/IR (DU) dated 29-10-1999 referred the following Industrial dispute to this Tribunal:—

“Whether the action of Sr. Superintendent of Post Offices, Karnal Division, Karnal (Haryana) in terminating the services of Sh. Krishan Kumar, ED-BHM w.e.f. 26-11-97 is legal and justified? If not, to what relief the workman is entitled?”

2. None appeared on behalf of the workman despite notice. It appears that workman is not interested to pursue with the present reference. In view of the above, the present reference is returned to the Central Govt. for want of prosecution. Central Govt. be informed.

Chandigarh

S.M. GOEL, Presiding Officer

26-2-2002.

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1425.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाक विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ के पंचाट (संदर्भ संख्या 40/94) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-4-2002 को प्राप्त हुआ था।

[सं. एल.-40012/239/92-आई. आर. (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 3rd April, 2002

S.O. 1425.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 40/94) of the Central Government Industrial Tribunal/Labour Court, Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Postal Deptt. and their workman, which was received by the Central Government on 3-4-2002.

[No. L-40012/239/92-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE SHRI S. M. GOEL, PRESIDING OFFICER, CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH.

Case No. ID 40/94

Shri Buti Nath S/o Sh. Chotad Ram, Village Kaulanwala Bhooad Tehsil Nahan District Sirmour (H.P.)

.....Applicant

Versus

Superintendent of Post offices, Solan Branch, Solan.

..... Management

APPEARANCES

For the workmen :

For the management :

AWARD

(Passed on 28-2-2002)

The Central Govt. vide Notification No. L-40012/239/92-I.R. (D.U.) dated 5-5-1994 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of the management of the Post Offices, Nahan in terminating the services of Shri Buti Nath, S/o Shri chotad Ram w.e.f. 25-2-89 is legally just and valid? If not, what relief the workman concerned is entitled to?”

2. The applicant submitted claim statement stating that he was engaged as E.D.R. in the postal department in the year 1981 at the Kaulanwala Bhoo Post office his services were terminated by the department on 24-2-1989 without serving any notice as provided U/S 25-F of the Act although he had completed more than 240 days of service in one calendar year prior to his retrenchment. It has also been claimed by the workman that many persons for example Jagat Ram was retained in service by the postal department although he joined the service of the postal department latter to the workman; and thus the principal of First come last go has been contravened.

3. On behalf of the respondent it was admitted that the applicant was appointed as extradepartmental runner at Kaulanwala Bhoo Post office on 18-2-81 and was relieved on 25-2-89 consequent upon mechanisation of EDR line. It was also stated that the services of the extradepartmental employees are not regulated by the I.D. Act, 1947. It was also stated that Jagat Ram has been working as E.D.D.A. and post of E.D.D.A. has not been abolished and therefore, he was continuing in service.

4. In support of their respective contentions the parties also submitted their respective affidavits. In support of the claim statement workman examined himself as WW 1. He tendered in evidence his affidavit as Ex. W. 1. He stated that he was working as EDDR in the post office since 18-2-1981 and he was removed from service when the line was mechanised on 15-2-89 after completion of 8 years of service. He has also admitted that he was offered the post of Branch Post Master Surla which was about 16 Kms away from Kaulanwala Bhoo Post office. He has also admitted that he had refused the offer because it was not possible for him to go there daily and he was also asked to take a room on rent close to the main road at his own expenses.

5. The management examined W 1 Khaili Ram. He admitted that workman was appointed as EDR. He admitted that Rattan Lal working as Extradepartmental branch postmaster and Som Dutt was working as Extradepartmental delivery agent. He has admitted that the services of Som Dutt were regularised and was also transferred to Kasauli. He has admitted that during the year 1989 EDR line was made mechanised. He has also stated that Rattan Lal was reverted to the post of E.D. Packer because the post of branch postmaster was abolished due to mechanisation and upgradation of Kaulanwala Bhoo Post office. He has stated that Jagat Ram was retained in service as EDDA although he was appointed in the year 1984, much after the appointment of the workman. He has admitted that workman had completed more than 240 days of service prior to his termination during the 12 calendar months and no compensation was paid to him. He has also stated that in remote areas the post of EDDR is still in existence.

6. The Learned Rep. of the parties submits their written arguments and did not volunteer any oral arguments.

7. On behalf of the Management preliminary objection has been taken. He has argued that it has been held by the Hon'ble Supreme Court that Postal Department is not an Industry. In support of his argument he has relied upon Sub-Divisional Inspector of Post Vaikam & Ors. Etc. Vs. Theyyam Joseph Etc. Reported in 1996(2) JT page 457. The Learned Counsel for the workman has drawn my attention to the Judgement of the Hon'ble Supreme Court in General Manager Telecom Vs. S. Srinivasa Rao, AIR 1998 Supreme Court Page 656 wherein this case law has been overruled and it has been held that Telecom department of Union of India is an Industry and therefore, in view of the set case law I may hold that postal department is an Industry and the applicant comes under the definition of 'workman' as defined under Section 2(s) of the Industrial Disputes Act, 1947. I may also hold that designation does not matter, it is only the nature of duties which category him as to whether he is workman or not under the definition of workman under the I.D. Act, 1947. It also does not matter(s) as to whether he was doing manual or clerical work for hire or reward. None the less admittedly Buti Nath workman was working as CDR on hire basis. Admittedly, he had completed 240 days in a calendar year prior to his retrenchment. Admittedly no retrenchment compensation was paid nor salary in lieu of notice was paid to him and therefore, he, in my opinion is entitled to reinstatement in service.

8. It is however worth mentioning that Buti Nath raised the demand after about three years. It is pertinent to mention that he was offered a job of Post Master at Surla as is clear from Ex. R1, which he refused on account of some problems. I am therefore, of the considered opinion in the circumstances that so far as the backwages are concerned, he may be paid backwages half the rate till his resumption of the post of EDR whosoever it is in existence or an equivalent post. The reference is answered accordingly. Central Govt. be informed.

Chandigarh.

28-2-2002

S.M. GOEL, Presiding Officer.

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1426.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाक विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ के पंचाट (संदर्भ संख्या 48/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-4-2002 को प्राप्त हुआ था।

[सं. एल.-40012/160/90-आई. आर. (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 3rd April, 2002

S.O. 1426.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 48/91) of the Central Government Industrial Tribunal/

Labour Court Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Postal Deptt. and their workman, which was received by the Central Government on 3-4-2002.

[No. L-40012/160/90-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE SHRI S. M. GOEL, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHANDIGARH.

Case No. I.D. 48/91

Shri Sukhwinder Singh S/o Sh. Sadhu Singh, V. P.O.
Bhogiwal, Via Marerkotra (Pb.) 148023

..... Petitioner

Vs.

Superintendent of Post Office, Sangrur Division Sangrur
(PB.) 148001.

..... Respondent.

Representatives

For the workman :

None.

For the management :

Sh. I.S. Sidhu

AWARD

(Passed on 25-2-2002)

The Central Govt. Ministry of Labour vide Notification No. L-40012/160/90-I.R. (D.U.) dated 19th April 1991 has referred the following dispute to this Tribunal for adjudication :

“Whether the action of Supdt. of Post Offices, Sangrur in terminating the services of Shri Sukhwinder Singh, w.e.f. 12-7-89 is justified? If not, what relief the concerned workman is entitled to?”

2. The applicant in claim statement has stated that he was employed as Extra Departmental Branch Post Master at Bhogiwal Extra Departmental Branch Office on 26-3-1988. He was removed from service on 12-7-1989 by the management without any charge sheet or enquiry. It is also stated that one Hukam Chand was recruited after the termination of the services of the applicant. The applicant prayed for his reinstatement in services with full back wages.

3. The management in written statement has taken the preliminary objection that service conditions of EDA are regulated under the P&T EDA's (Service & Conduct) Rules 1964, so they are not covered under the definition of 'workman' as defined under the I.D. Act, 1947. On merits it is admitted that applicant was employed from 26-3-1988 to 12-7-1989 at time gap arrangement. It is pleaded that his service record was unsatisfactory and he refused to hand over the charge which was taken over from him with the help of the police. It is also admitted that he was not issued any charge sheet nor any enquiry was conducted against him as it was not required. It is also admitted that one Hukam Chand was appointed after the termination of the applicant.

4. Replication was also filed on behalf of the applicant reiterating the claim made in the claim statement.

5. The applicant in evidence filed his affidavit Ex. W 1 and appeared as WW1 for cross-examination. In rebuttal the management has produced Shri M.S. Jhita as MW 1 who has filed his affidavit Ex. M 2 in evidence. He has admitted in cross-examination that no domestic enquiry was held against the applicant as it was not required under the rules. Similar is the position about the charge sheet and show cause notice. It is also admitted by the management's witness that the applicant had worked with the department without any break from 26-3-1988 to 12-7-1989. It is also admitted by the witness of the management that the applicant was not paid any retrenchment compensation and pay in lieu of notice at the time of his termination, as the applicant was removed from the service by way of punishment.

6. The learned representatives of the parties submits their written arguments and did not volunteer any oral arguments.

7. On behalf of the Management Preliminary objection has been taken. He has argued that it has been held by the Hon'ble Supreme Court that Postal Department is not an Industry. In support of his argument he has relief upon Sub-Divisional Inspector of Post, Vaikam & Ors. Etc. Vs. Theyyam Joseph Etc. reported in 1996(2) JT page 457. The Learned Counsel for the workman has drawn my attention to the Judgement of the Hon'ble Supreme Court in General Manager Telecom Vs. S. S. Srinivasa Rao, AIR 1998 Supreme Court page 656 wherein this case law has been overruled and it has been held that Telecom department of Union of India is an Industry and therefore, in view of the set case law I may hold that postal department is an Industry and the applicant comes under the definition of 'workman' as defined under Section 2 (s) of the Industrial Disputes Act 1947. I may also hold that designation does not matter, it is only the nature of duties which categories him as to whether he is workman or not under the definition of workman under the I.D. Act, 1947. It also does not matter as to whether he was doing manual or clerical works for hire or reward. None-the-less admittedly workman was working as EDR on hire basis. Admittedly he had completed 240 days in a calendar year prior to his retrenchment. Admittedly no enquiry was conducted against the workman at the time of termination of the services of the workman. It is also an admitted fact that no retrenchment compensation or pay in lieu of notice was given to the applicant. Thus the management has clearly violated the provisions of Section 25-F of the I.D. Act, 1947. The workman is therefore entitled for reinstatement in service with full backwages.

8. In view of the above findings, the action of Supdt. of Post Office Sangrur in terminating the services of Shri Sukhwinder Singh w.e.f. 12-7-1989 is unjustified. The applicant is entitled to be reinstated in Service with continuity and with full back wages. Central Govt. be informed.

Chandigarh
25-2-2002

S.M. GOEL, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2002

का.आ.1427.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चण्डीगढ़ के पचाट (संदर्भ संख्या 18/95) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-4-2002 को प्राप्त हुआ था।

[सं. एल.-40012/218/94-आई आर. (डी.यू.)]
कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi the 3rd April, 2002

S.O. 1427.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref No 18/95) of the Central Government Industrial Tribunal/Labour Court Chandigarh now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Deptt and their workman, which was received by the Central Government on 3-4-2002

[No L-40012/218/94-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE SHRI S M GOEL, PRESIDING OFFICER,
CENTRAL GOVT INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHANDIGARH

Case No 1 D 18 of 1995

Shri Lakshmi Chand S/o Sh Munshi Ram R/o, Village
Bahmuwala, P O Kalram, Teh kalayat, Distt Kaithal

Petitioner

Vs

The Distt Engineer, Telecommunication Telegraph,
Karnal Respondent

REPRESENTATIVES

For the workman

Sh N K Kapil,

For the management

Sh G C Babbar

AWARD

(Passed on 4-3-2002)

The Central Govt Ministry of Labour vide Notification No L-40012/218/94-I R (D U) dated 22nd February 1995 has referred the following dispute to this Tribunal for adjudication

Whether the action of the Management of Telecommunication department Karnal in not giving the re-employment to Shri Lakshmi Chand, ex-daily paid labour is just, fair and legal ? If not, to what relief the workman is entitled and from what date ?

2 The applicant in claim statement pleaded that he was employed by the respondent w e f 1-7-1985 and his services were terminated w e f 31-7-1988, without payment of any retrenchment compensation without notice charge sheet It is pleaded that the management has also violated the provisions of Section 25-C & H of the I D Act, 1947 as juniors have been retained in

service and the management have also recruited new hands The applicant prayed for reinstatement in service with full back wages.

3 In written statement the respondent has pleaded that the workman was employed for specific work on 2-7-1985 and worked up to 31-7-1987 The applicant was given one month notice indicating the reasons for retrenchment and Rs 419-50 was paid as retrenchment compensation and therefore, the management has complied with the provisions of Section 25 F It is specifically pleaded that no junior has been retained in service and no new hands was recruited in service. Only some casual workers were taken back in service on the orders of the Hon'ble Central Admn. Tribunal. There is no illegality in the termination of the applicant and the applicant is not entitled to any relief.

4 Replication was also filed by the applicant reiterating the claim made in the claim statement.

5 In evidence the applicant filed his own affidavit Ex W 1 and also documents Ex W-2 the selection order The management in evidence has filed the affidavit of H K Aggarwal as Ex M1 and documents Ex M2 to Ex M4 The witness of the management has deposed that one month notice was given to the workman before terminating his services which is Ex M 2 The retrenchment compensation was also paid to him amounting to Rs 419-50 vide money order dated 12-10-1987

6 I have heard the representative of both the parties and carefully gone through the evidence and record of the case The rep of the management has drawn my attention to Ex M2 the notice for termination of the services of the workman dated 25-6-1987 in which it is clearly mentioned that the applicant will not be given any work w e f 1-8-1987 So the plea of the applicant that he was not given notice before his termination is not correct The rep of the management has also drawn my attention to the letter dated 9-10-1987 Ex M3 vide which the workman was given retrenchment compensation amounting to Rs 419-50 along with other persons so, it is a not correct that he was not paid any retrenchment compensation Thus the management has complied with the provisions of Section 25-F of the I D Act, 1947.

7 Regarding the plea of the workman that juniors to him were retained in service and new hands were employed, the applicant has failed to show and point out any person who was employed by the management or retained by the management after termination of his service The management has reinstated in service some workers who were ordered to be employed by the Central Admn Tribunal and no junior and similarly placed persons was appointed and retained by the management after termination of the service of the applicant The applicant has failed to prove his case as he has not given any name of his junior or the persons employed after his termination

8 In view of the discussions, as aforesaid, there is no merit in the reference, the same is returned accordingly Central Govt be informed Chandigarh

Chandigarh

S M GOEL, Presiding Officer

4-3-2002

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1428.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूर संचार विभाग के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पंचाट (संदर्भ संख्या 563/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-4-2002 को प्राप्त हुआ था।

[सं. एल-14011/59/2000-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 3rd April, 2002

S.O. 1428.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 563/2001) of the Central Government Industrial Tribunal-cum-Labour Court Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Telecom Deptt. and their workman, which was received by the Central Government on 3-4-2002.

[No. L-14011/59/2000-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 28th February, 2002

PRESENT:

K. Karthikeyan
Presiding Officer

INDUSTRIAL DISPUTE No. 563/2001

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the Workman Sri S. Sampath and the Management of Deputy General Manager, Telecom, Chengalpet SSA, Chennai.]

BETWEEN

Sri S. Sampath : I Party/Workman

AND

The Deputy General : II Party/Management
Manager,
Telecom, Chegalpet SSA,
Chennai

APPEARANCES:

For the Workman : M/s. M. Gnanasekar
and G. Manjula,
Advocates

For the Management : M/s. R. Kannappan,
Addl. SGC

The Govt. of India, Ministry of Labour, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned dispute for adjudication vide Order No. L-14011/59/2000-IR (DU), dated 26-3-2001.

2. On receipt of the order of reference from the Government of India, Ministry of Labour, the case has been taken on file as I.D. No. 563/2001 and notices were sent to both the parties to the dispute, with a direction to appear before this Tribunal on 2-5-2001 to prosecute this case further.

3. When the matter came up before me for final hearing on 28-2-2001, upon perusing the Claim Statement, Counter Statement, the other material papers on record, and after hearing the arguments advanced by the learned counsel for the II Party/Management, this matter having stood over till this date for consideration, this Tribunal has passed the following:—

AWARD

4. The fact of the Industrial Dispute as pleaded by the I Party/Workman in the Claim Statement are briefly as follows:—

The I Party/Workman Shri S. Sampath (hereinafter referred to as Petitioner) was engaged as casual labour in the II Party/Management Telecom Department (hereinafter refers to as Respondent) in August, 1984 for digging, drawing wires, laying posts and for other allied jobs as directed by his superiors. He was paid nominal wages of Rs. 6.50 as daily rated wages. Though the Petitioner has been continuously working with the Respondent, and has put in 846 number of days of service, he had not been regularised. The Department of Telecommunication in order to absorb the casual mazdoors working the department for a long period formulated a Scheme known as casual mazdoors (Grant of Temporary Status and Regularisation) Scheme. The Respondent/Telecom Department failed to confer temporary status on the Petitioner under the said Scheme, which is illegal and arbitrary. The I Party/Workman has been denied employment w.e.f. 25-6-1995 and, when his services were terminated he was getting Rs. 60/- as daily wages. When he approached the concerned authority, for conferment of temporary status, he was informed that he will be taken back to duty. The Petitioner was waiting for orders from the Respondent/Telecom Department regarding his re-engagement. However, he has not received any orders nor he was taken back to duty so far. His service was utilised for the regular work that is perennial in nature. Therefore, when the work and the necessity to engage the Petitioner continuous, there is no reason or justification for denying the employment to the Petitioner. No reason was given by the Respondent/Telecom Department for terminating the services of the Petitioner and the Respondent failed to follow the principles of natural justice. No enquiry was conducted and the Petitioner was not given any opportunity before his services were discontinued. The Petitioner has put in more than a decade continuous service and the termination of his service is in violation of the provisions of Section 25F of the Industrial Disputes Act, 1947. Further, the Petitioner was not given any notice of compensation in terms of the said provision of Industrial Disputes Act, 1947. Hence, the action of the Respondent/Department in terminating the

services of the Petitioner without notice or compensation is ab initio void and the Petitioner is deemed to be in continuous in service and therefore, is entitled to be reinstated with all other service benefits including arrears of back wages. The Respondent ought to have conferred temporary status as per the temporary status scheme and further absorbed him against regular Group D post. The Respondent/Telecom Department's action in not doing so is illegal and arbitrary. Hence, this industrial dispute has been raised against the Respondent/Telecom Department claiming the above relief.

5. The II Party/Management Telecom Department has filed a Counter Statement denying the allegations of the Petitioner in the Claim Statement about his appointment as Casual Labour in August, 1984 and his contention about continuous working with the Respondent/Department for a period of 846 number of days of service and the alleged termination of the Petitioner from service on 25-06-1995. It is further alleged that the Petitioner was engaged purely on casual basis for the unskilled work i.e. to carry out digging, drawing out wires, laying posts and for other casual works on daily rated wages basis for a period of 140 days from 26-12-1994 to 25-06-1995. The department used to engaged persons like the Petitioner when there was work. Since there was no work he was not further engaged. Hence the question of appointment, termination and continuous service does not arise. The work done by the Petitioner was purely casual in nature and not perennial. The Respondent has never informed the Petitioner that the Respondent/Telecom Department would take the Petitioner back to service. In 1989, a Scheme called 'Grant of Temporary Status to Casual Labourers' was introduced for the Casual Labourers who actually worked. The essential conditions of the scheme are :

1. The casual labour should have been engaged prior to 31-3-1985;
2. He should be currently employed on the date of the implementation of Scheme i.e. 01-10-89.
3. He should have put in 240 days continuous service in any one of the preceding years prior to 01-10-1989; and
4. There should not be a break for a period of more than one year.

The Casual Labourers who actually worked were asked to furnish the service particulars to grant temporary status. The service records produced by the Petitioner are pertaining to Madras Telephones and not pertaining to this Respondent. It is seen from the reference that the Petitioner has not raised any dispute against the Madras Telephones. In this juncture, the Petitioner claim against the Respondent is not maintainable either in law or on facts, and hence liable to be dismissed. Since the Petitioner has not worked 240 days with the Respondent the question of continuous service, notice under section 25F under Industrial Disputes Act, 1947 and retrenchment compensation does not arise. The Petitioner had submitted false service particulars, with a view to getting employment and other benefits from the department. The alleged work done by the Petitioner is not skilled and perennial in nature. As on date, the department is not engaging Casual Labour like the Petitioner for any purpose and also not doing such type of work as done by the Petitioner. Since there is no work and there is no post, there is no scope for the Petitioner

for his re-employment in the Respondent/Telecom Department. The Petitioner was engaged on casual basis as and when required by the department, hence, he is not eligible for reinstatement as per the law and as well as temporary Status Mazdoor Scheme. Hence, it is prayed that the Hon'ble Tribunal may be pleased to dismiss the claim petition.

6. The Point for my consideration is—

“Whether the termination and non-regularisation of Shri S. Sampath by the Department of Telecom, Chennai, is legal and justified? If not, to what relief the workman is entitled to?”

Point :—

The claim made by the Petitioner in this industrial dispute against the Respondent/Telecom Department is that the termination of the Petitioner from service by the Respondent/Management is illegal and he must be reinstated in service by the Respondent/Management from the date of the termination from service as mentioned in the Claim Statement. According to the Petitioner, he was engaged by the Respondent/Management Department of Telecommunication as casual mazdoor in 1984 and worked continuously till 1995 as he has stated in his Claim Statement. It is his further allegation in the Claim Statement that all of a sudden he was terminated and the action of the Respondent/Department Telecommunication Department in terminating him from service in not following the provisions of the Industrial Disputes Act, 1947 is ab initio void and against law. Since the said action of the Respondent/Management is illegal he must be reinstated in service by the Respondent/Management from the date of the alleged termination service in the year 1995. But it is the contention of the Respondent/Management that service certificates produced by the Petitioner are pertaining to Madras Telephones and not pertaining to this Respondent. The Petitioner has not raised any dispute against the Madras Telephones, hence, the claim against this Respondent is not maintainable either in law or on facts. The learned counsel for the Respondent/Management would contend that in the Claim Statement of the Petitioner nothing has been mentioned as to who has appointed him in service and where he was worked and who in the Respondent Department has terminated him from service. There is no appointment order as well as the termination order passed by the Respondent/Management for the Petitioner to claim that he was appointed by the Respondent/Telecom Department and he was terminated against the provisions of Industrial Disputes Act, 1947. According to the II Party/Management, he was not at all employed the Petitioner as it is alleged by the Petitioner in his Claim Statement. It is the specific stand of the Respondent/Management that the service records produced by him earlier before the department for grant of temporary status are pertaining to Madras Telephones and not pertaining to this Respondent. As alleged by the Respondent in their Counter Statement, since the Petitioner has not established by way of legal and acceptable evidence that he worked for 240 days, the question of continuous service, notice under section 25F of Industrial Disputes Act, 1947 and retrenchment compensation does not arise. To disprove the contention of the Respondent in their Counter Statement that he has not worked under the Respondent department and the records produced by him earlier are

pertaining to Madras Telephones only, the Petitioner has not chosen to let in oral or documentary evidence. Under such circumstances, the contention of the Respondent in their Counter Statement stands un rebutted. In the absence of any material available in this case to show that the Petitioner has been engaged by the Respondent/Management in doing the work of the department as casual mazdoor, he can not make a claim against the II Party/Management for reinstatement in service with continuity of service and back wages. From this it is seen as contended by the learned counsel for the Respondent/Management in his argument the Petitioner was not at all employed even as a casual mazdoor by the Respondent/II Party Management and hence the Petitioner cannot have any claim against the Respondent/Management. If really, the service records produced earlier by Petitioner was true, he could have initiated the proceedings as an industrial dispute for adjudication against the Madras Telephones. In spite of a specifically mention in the Counter Statement of the Respondent/Management that the Petitioner has not raised any dispute against the Madras Telephones, and had pursued this case further against the present Respondent/Management only go to show that he wanted to achieve in his aim of getting an employment in the Telecom Department. From the materials available in this case and from the failure to prove the same taken by the Petitioner in his Claim Statement against this Respondent/Management, it can be said that the Petitioner has initiated this industrial dispute only as a futile exercise for getting an employment in the Telecom Department at any cost. So under such circumstances, the question of Respondent not following the provisions of Industrial Disputes Act, 1947 and the issuance of prior notice and retrenchment compensation under Section 25F of Industrial Disputes Act, 1947 will not at all arise. Further, the question of termination and non-regularisation of the Petitioner by the Department of Telecommunication, Chennai is legal or justified cannot be decided in this industrial dispute, the Petitioner has raised against the Respondent, the Deputy General Manager Telecom, Chengalpet SSA, Chennai. Hence, this Petitioner is not entitled to the relief he prayed for in his Claim Statement against this Respondent/Management. Thus, the point is answered accordingly

7. In the result, an Award is passed holding that the petitioner is not entitled to the relief prayed for in the Claim Statement against this Respondent/Management No Cost

(Dictate to the Setnographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 28th February, 2002)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined :

On either side : None

Documents Marked

On either side : Nil

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1429.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मिलिट्री फार्म के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में

निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चंडीगढ़ के पंचाट (संदर्भ संख्या 193/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-04-2002 को प्राप्त हुआ था।

[सं. एल-14012/5/2000-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 3th April, 2002

S.O. 1429.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref No 193/2000) of the Central Government Industrial Tribunal/Labour Court, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Military Farm and their workman, which was received by the Central Government on 03-04-2002

[No L-14012/5/2000-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

IN THE COURT OF SHRI S. M. GOEL, PRESIDING OFFICER, CENTRAL GOVT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHANDIGARH

Ref No ID 193/2000

Shri Balbir Singh, House No 139, Lal Kurti Bazar, Ambala Cantt Ambala (Haryana)-133001

Applicant

Versus

Officer Incharge, Military Farm, Ambala Cantt (Haryana)-133001

Management

For the workman

None

For the management

None

AWARD

(Dated 5th of March, 2002)

The Central Govt Ministry of Labour in exercise of powers conferred on them under Section 10(1)(d) and sub-section 2-A of Section 10 of the Industrial Disputes Act 1947 (hereinafter referred as the Act), vide their letter No L-14012/5/2000/IR(DU) dated 31-5-2000 referred the following industrial dispute to this Tribunal :—

“Whether the action of the management of Military Farm, Ambala Cantt in terminating the services of Sh Balbir Singh w e f 17-11-98 is legal and justified? If not, to what relief the workman is entitled ?”

2 None has put up appearance on behalf of the parties despite their presence on the last date of hearing. It appears that workman is not interested to pursue with the present reference. In view of the above, the present reference is dismissed in default.

Central Govt. be informed.

Chandigarh
5-3-2002

S. M. GOEL, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1430.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.बी.एम.बी. के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चंडीगढ़ के पंचाट (संदर्भ संख्या 88/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-4-2002 को प्राप्त हुआ था।

[सं. एल-42011/72/90-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 3rd April, 2002

S.O. 1430.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref No 88/91) of the Central Government Industrial Tribunal/Labour Court, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of B B M B and their workman, which was received by the Central Government on 3-4-2002

[No L-42011/72/90-IR(D U)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE SHRI S M GOEL, PRESIDING OFFICER,
CENTRAL GOVT INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHANDIGARH

Case No ID 88 of 1991

General Secretary,

B B M B Mazdoor Union,

S-1/51, B S L Sunder Nagar-174482

Petitioner

Vs

Chief Engineer (Power Wing)

B B M B Slapper (H P)

Respondant

Representatives

For the workman Sh Dhanu Ram

For the management Ram Singh with
Neeru Chadha

AWARD

(Passed on 1st March, 2002)

The Central Govt Ministry of Labour vide Notification No L-42011/72/90-I R (DU) (D II) (B) dated 2-7-1991 has referred the following dispute to this Tribunal for adjudication

Whether the action of management of BBMB in placing the Security Guards as per list (enclosed) in the pay scale of Rs. 300—430 from due date of

their apptt instead of 350—600 and not granting the scale of Rs 950—1800 w e f 1-1-86 is justified ? If not, what relief the concerned workmen are entitled to ?”

2 The union in the claim statement has stated that the BBMB has adopted the pay scale at par with PSEB and on the pattern of the pay scale of security guard w e f 1-1-1978 the scale of Rs 350—600 was allowed to the security guard That the management wrongly mentioned the pay scale as vs 300—430 in the appointment letters of the security guard as given in claim statement They were entitled to the scale of Rs 350—600 from the date of their appointment It is also pleaded that on revision of pay scale the scale of Rs 350—600 was revised to 950—1800 Thus, the security guards are entitled to the pay scale of Rs 350—600 and corresponding pay scale of Rs 950—1800 as the pay scale of security guards has been adopted by the BBMB as per letter dated 29-5-80

3 The management in written statement has pleaded that initially security guards were appointed in works charge capacity and they were allowed the pay scale of Rs 300—430 and they did not raise any dispute at that time and till 1987 It is admitted that pay scale of PSEB has been adopted by the BBMB but in the PSEB the pay scale of Rs 350—600 was applicable to the Security Guards who were recruited in accordance with the PSEB Security Force Service Regulations, 1976 It is further pleaded that applicants are performing the duties of Chowkidars on the Project The applicants are not performing the similar duties as performed by the Security Guards of the PSEB So they are not entitled to higher pay scale Therefore, the claim is baseless

4 Replication was also filed by the Union on the same lines to the claim statement In evidence the Union produced Jai Kishan, who filed his Affidavit Ex W1 he also relied on documents Ex W2 to Ex W17, Khazana Ram as WW2 who tendered his affidavit Ex W18 In evidence the Union also produced WW3 Sunder Lal who filed his affidavit Ex W-19 In rebuttal the management produced S C Dutta who filed his affidavits Ex M1 and documents Ex M2 to Ex M7

5 I have heard the Rep of both the parties and have also gone through the written arguments submitted on behalf of the Management and gone through the evidence record of the case It is admitted fact that the applicants were appointed as Security Guards by the Management on the respective dates and in the appointment letter the scale was mentioned as Rs 300—430 The claim of the Management is that the management intended to appoint Chowkidar and not the security guards It is also admitted that the Management of BBMB adopted the pay scale of Punjab State Electricity Board I have examined Ex W2 by which the pay scale of Security Guards Grade II has been revised by the PSEB from Rs 85—124 to Rs 350—600 w e f 1-1-1978 which was adopted by the BBMB as admitted by the Management in their written statement The scale of Rs 300—430 given to the Security Guards is wrong They are entitled for the scale of Rs 350—600 with effect from the date of their appointment and are also entitled to the corresponding pay scale to this pay scale in the further revision of the pay scales w e f the respective revision The representative of the management has

argued that these applicants had earlier filed applications U/s. 33-C(2) which was dismissed by this court holding that adjudication about entitlement of higher grade is beyond the scope of Labour Court. But the case in hand is reference raised by the Union and there is no bar to decide such issue in the reference. The rep. of the management has further argued that determination of pay scale is the primary function of the Executive and not the judiciary. He has placed reliance on the judgement of Hon'ble Supreme Court reported in AIR 1992 (2) S.C. page 82. But the facts of the present case law are different from that of the case before the Hon'ble Supreme Court. In the case in hand, the scale was already applicable and available with the management for security guards but this was not given to the applicants and the scale which was applicable, to the Chowkidars was given. So in the case in hand, there is no determination of pay scale but only the corresponding pay scale on the revision is to be allowed and it is also to be corrected in the appointment letter as the scale given to the security guards is the scale of Chowkidar and there is no such scale of security guards as given to the applicants. Therefore, I am of the considered opinion that the applicants are entitled to the pay scale of Rs. 350-600 from the date of their appoints and on revision corresponding pay scales from time to time. The reference is answered accordingly. Central Govt. be informed.

Chandigarh,
1-3-2002

S.M. GOEL, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1431.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बेस कंस्ट्रक्शन बोर्ड के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चंडीगढ़ के पंचाट (संदर्भ संख्या 38/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-4-2002 को प्राप्त हुआ था।

[सं. एल-42011/26/92-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 3rd April, 2002

S.O. 1431.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 38/93) of the Central Government Industrial Tribunal/Labour Court, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Beas Construction Board and their workman, which was received by the Central Government on 03-04-2002.

[No. L-42011/26/92-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE SHRI S. M. GOEL, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHANDIGARH.

Case No. I.D. 38/1993

Shri Banta Ram Secretary
B.M.S. 47/9, Bangla Mohalla
Mandi-175001

... Petitioner

VERSUS

1. General Manager,
Beas Construction Board, B.B.M.B
Secretariate, Sector 19-B,
Madhya Marg, Chandigarh-160017
2. Executive Engineer,
Beas Construction Board (Power Wing)
Prem Nagar, Bhiwani.
3. Chief Engineer,
Beas Construction Board.
S.C.O. 62-63 Sector-17,
Chandigarh-160017

... Respondent

Representatives

For the workman : Shri Dhani Ram
For the management : K.C. Goel with
Neeru Chadha

AWARD

(Passed on 25th of February, 2002)

The Central Govt. Ministry of Labour vide Notification No. L-42011/26/92-I.R. (D.U) dated 5th March, 1993 has referred the following dispute to this tribunal for adjudication :

“Whether the action of the Executive Engineer BCB Bhiwani and Chief Engineer BCB, (Electrical) Beas Project (Power Wing) BCB SCO No. 62-63 Sector 17-A Chandigarh in terminating the services of 29 workers (whose names and address is given below) is legally just and valid? If not, then to which relief these workmen are entitled to and from which date?”

Sl. No.	Name & Father's Name	Permanent Address of the Employee
1.	Rattan Lal S/o Nihala	Village Asha Majhri P.O. Jukhala, Distt. Bilaspur.
2.	Bhuri Singh S/o Nirjan	Village Panjog P. O. Brampukhar Distt. Bilaspur. (H.P.)
3.	Sukh Ram S/o Sadhu	Village Kotla, P.O. Jukhala, Distt. Bilaspur. (H.P.)
4.	Dhani Ram S/o Durga	Village Niharkshan Balsa P.O. Brampukhar.
5.	Brij Lal S/o Bhangar	Village and P.O. Brampukhar, Distt. Bilaspur, (H.P.)
6.	Babu Ram S/o Krishanu	V. Panjag P.O. Brampukhar. Distt. Bilaspur (H.P.)
7.	Kala Ram S/o Dangu	V. Kotla, P.O. Jukhala, Distt. Bilaspur (H.P.)
8.	Nika Ram S/o Gulabu	V. Lakhal, P.O. Deowali, Distt. Bilaspur (H.P.)
9.	Sita Ram S/o Govind	V. Brog, P.O. Deowali, Distt. Bilaspur (H.P.)
10.	Jagan Nath S/o Bandhu Ram	V. Bhajan, P.O. Deowali, Distt. Bilaspur (H.P.)

11. Sita Ram S/o Pala Ram	V. Thauru, P.O. Markand, Distt. Bilaspur (H.P.)
12. Ram Lal S/o Lakhu Ram	V. Nog, P.O. Binda, Distt. Bilaspur (H.P.)
13. Bansi Ram, S/o Lala Ram	V. Bakhal, P.O. Deowali, Distt. Bilaspur (H.P.)
14. Babu Ram S/o Nihala Ram	V. Jukhala, P.O. Jukhala, Distt. Bilaspur (H.P.)
15. Sita Ram, S/o Sunka Ram	V. Bakhal, P.O. Deowali, Distt. Bilaspur (H.P.)
16. Madah, S/o Ram Nand	V. Baddu, P.O. Chharol, Distt. Bilaspur (H.P.)
17. Kali Dass, S/o Nikru	Vill. and P.O. Brampukhar, Distt. Bilaspur (H.P.)
18. Baldev Raj, S/o Gwarkhu	Vill. and P.O. Jukhala, Distt. Bilaspur (H.P.)
19. Ram Lal, S/o Sunka Ram	V. Bakhal, P.O. Deowali, Distt. Bilaspur (H.P.)
20. Inder Lal, S/o Dela Ram	V. Ghayana, P.O. Brampukhar, Distt. Bilaspur (H.P.)
21. Telu Lal, S/o Daya Ram	V. Sira, P.O. Binola, Distt. Bilaspur (H.P.)
22. Sukha Ram, S/o Nohala Ram	V. Banjail, P.O. Namol, Distt. Bilaspur (H.P.)
23. Ratan Lal, S/o Lonugo	V. Niharkhan, P.O. Brampukhar-Basla, Distt. Bilaspur (H.P.)
24. Roshan Lal, S/o Tissu Ram	V. Majeer, P.O. Deoth, Distt. Bilaspur (H.P.)
25. Sukh Ram, S/o Tulsu Ram	V. Sira, P.O. Binola, Distt. Bilaspur (H.P.)
26. Nikku Ram, S/o Kanshi Ram	Vill. and P.O. Brampukhar, Distt. Bilaspur (H.P.)
27. Inder Lal, S/o Rattan Lal	Vill. and P.O. Jukhala, Distt. Bilaspur (H.P.)
28. Banta Ram, S/o Gulzari	V. Nag, P.O. Binola, Distt. Bilaspur (H.P.)
29. Ramjee Lal, S/o Nihalu	V. Lagdhar, P.O. Deoth, Distt. Bilaspur (H.P.)

3. The applicants filed the claim statement inter pleading therein that they joined the Beas Construction Board (hereinafter referred to as BCB) as work charged. T. mate in October 1983. their service conditions were regularised as per the Certified Standing Orders of the BCB. The respondent vide its letter dated 6-5-1991 issued orders for deployment of the applicants on Ranjit Sagar Dam of Punjab State on job order basis. It was mentioned in the letter that in case the applicants did not join duty at Ranjit Sagar Dam their services would stand terminated. It is pleaded that the applicants were relieved on 25-6-1991 and loaded in trucks at Slapper on 26-6-1991 for deportation to Ranjit Sagar Dam. It is pleaded that on the way to Nangal they were disembarked and trucks gone missing from Nangal and they were left in lurch. They were returned to Slapper and sought in structions from the SDO (TLSC) BCB Slapper. He informed that their services have been terminated and he could not allow them to join at Slapper. It is further pleaded that no

retrenchment compensation or pay in lieu of notice was paid to them and no enquiry was conducted against them for any misconduct. They prayed for their reinstatement in service with full backwages.

4. The respondents in written statement has taken preliminary objection that on the completion of the Beas Project, the Beas Construction ceased to exist and workcharged employees, casual and contract workers and those engaged on contingent basis, have no right to continue in employment with the Beas Construction after the completion of the Beas Project. The Central Administrative Tribunal gave directions to the management to regularise the serives of applicants. In OA. No. 468/1987 to regularise the services of applicants or in the alternative to accommodate them on equivalent posts and in the events of their retrenchment the applicants shall be entitled to the retrenchment compensation as per rules. In pursuance of the above orders, the management tried to adjust the surplus staff on job order basis in other organisation on humanitarian grounds and as per requirement of the Punjab Govt. they were sent on job order at Ranjit Sagar Dam and the applicants themselves chose not be deployed at Ranjit Sagar Dam and they were retrenched as per Section 25 (FFF) (2) of the I.D. Act. and they are not entitled to be reinstated. On merits. It is stated that on completion of the BCB Project the applications become surplus and they were to be deployed at Ranjit Sagar Dam on Job Order Basis and as per the Notice dated 6-5-1991 it was clearly stated that if they did not accept the offer they will be retrenched the management has no work for them. They were loaded in trucks of the Management and for Night Halt they were accommodated at Nangal but the applicants gave a slip in the morning at Nangal and did not report for duty at Ranjit Sagar Dam which shows their intention that they were not interested to work at Ranjit Sagar Dam. In the given circumstances and as per letter dated 6-5-1991 their services have been retrenched and they were not entitled for any re-instatement and their claim deserves rejection.

5. The applications filed replication reiterating the claim made in the claim petition.

6. In evidence the applicants produced as many as two witnessed namely. Shri Inder Lal and Sukh Ram, WW1 who filed his affidavit was examined as W1 in evidence and WW2 Sukh Ram filed his affidavit as W2 The Management produced Rai Singh as MW1 who filed his affidavit Ex. M2 he also relied on documents Ex. M3 to Ex. M74. The Management also produced Singara Singh as MW2 who filed his affidavit Ex. M75 and also MW3 Rajesh Monga who filed his affidavit Ex. M76. In cross-examination MW3 has deposed that out of 142 workers 19 did not proceed for slapper, 55 were found absent at Nangal and only 7 persons out of 55 reached at Ranjit Sagar Dam at their on cost.

7. I have hear the Rep. of the parties and gone through the record and evidence produced on case file. The case of the applicants is that they were left in lurch at Nangal by the Management though they were carried from slapper. 55 out of 123 were found absent in the morning as stated by the MW3 witness of the management who submitted the list of the absconded applicants to the SDO. As per the Management the truck was very much there at Nangal and 68 persons boarded the trucks at Nangal and joined duty at Ranjit Sagar

Dam Seven persons out of 55 reached at Ranjit Sagar Dam on their own expenses and remaining had not reported for a duty at Ranjit Sagar Dam. The applicants gave a slip to the accompanying J E in the Morning and Failed to report the duty at Ranjit Sagar Dam. It shows the intention of the applicants that they were not ready to work at Ranjit Sagar Dam on work order basis. It was made clear to the applicants that in case they were not willing to work their services would be retrenched as there was no work available at Beas Project and in pursuance of the clear instructions contained in letter dated 6-5-1991 their services were retrenched. In my considered opinion they were rightly retrenched by the Management for which the retrenchment compensation was also sent to the applicants at their last known addresses which were received back with the management. It is, therefore, held that applicants were not willing to work at Ranjit Sagar Dam and were rightly retrenched.

8 In view of the above discussions made in the earlier paras the action of the respondent management in retrenching the services of the applicants as detailed in reference order is fully justified. They are not entitled to any relief except the retrenchment compensation lying with the management. The reference is answered accordingly. Central Govt be informed.

Chandigarh

Dated 25-2-2002 S M GOEL, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1432.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डी.पी.एच (पावर विंग) के प्रबंधन के संबंधित नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चंडीगढ़ के पंचाट (संदर्भ संख्या 130/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-04-2002 को प्राप्त हुआ था।

[सं. एल-42011/4/91-आई आर. (डी यू)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 3rd April, 2002

S.O. 1432.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref No 130/90) of the Central Government Industrial Tribunal/Labour Court, Chandigarh now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of D P H (Power Wing) and their workman, which was received by the Central Government on 30-4-2002.

[No L-42011/4/91-IR(D U)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE SHRI S M GOEL, PRESIDING OFFICER,
CENTRAL GOVT INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHANDIGARH

Case No ID 130 of 1991

General Secretary BB 1B/BCB
Power Wing, Mazdoor Union
Sunder Nagar, Distt Mandi (H P)
174401

Petitioner

Vs

- 1 Chief Engineer, D Y H (Power Wing)
Nangal Township—140124
- 2 Superintending Engineer,
DPH (Power Wing) Circle,
Slapper (H P)—174403

Respondent

REPRESENTATIVES

For the workman Shri Dhanu Ram

For the management Shri Ram Singh

AWARD

(Passed on 26th of February, 2002)

The Central Govt Ministry of Labour vide Notification No L-42011/4/91-IR (D U) dated 25th September, 1991 has referred the following dispute to this Tribunal for adjudication

‘ Whether Oiler and cleaner have been correctly placed in the pay scales of Rs 830—1560 w e f 1-1-86 ? If not, then to which scales of pay these Oiler and Cleaners are entitled to and from which date ?’

2 The Union in the claim statement has claimed that Oilers and Cleaner are performing the duties on Dehar Power House and they are performing the duties on filtration of Generator set machineries which is high skilled job, so they are entitled to the scale of Rs 850—1800 instead of Rs 830—1560 w e f 1-1-1986 as the Board has opted the pay scales at par with PSEB. It is thus prayed that they may be allowed the scale of Rs 950—1800 w e f 1-1-1986 instead of scale of Rs 830—1560.

3 In the written statement the respondent has pleaded that comparison made in the duties of the Oiler and Cleaner with that of Filtration Technical is irrelevant. Both these categories are quite different. The post of Electrical Mistries mech mistries/fitters/Pump Operator have been sanctioned by the Board for the operation and they were allowed the scale of Rs 950—1800 on the basis of job responsibility and the Oiler and Cleaners are placed in the scale of Rs 830—1560. The scale of Oiler and Cleaners are revised from 350—600 to 830—1560 w e f 1-1-1986 and they have rightly been placed in this scale and the management prayed for the rejection of the claim of the Union.

4 Replication was also filed on behalf of the Union reiterating the claim as made out in the claim statement.

5 In evidence the Union produced Man Chand as WW 1 who produced his affidavit Ex W1 and he also filed some documents Ex W2 the copy of demand notice and W3 copy of report of A L C (C) and copy of pay scales as Ex W4. The Union also produced Prem Singh as WW 2 who filed his affidavit as Ex W5 both the

witnesses of the Union admitted in cross-examination that Electrical/Mechanical mistri is the next promotion of Oiler and Cleaner. In rebuttal the management has produced Shri S.C. Dutta as MW1 who filed his affidavit Ex. M1 in evidence. He has also produced documents Ex. W2 and W3.

6. I have heard the representative of the parties and have gone through the record of the case.

7. The representative of the Union has contended that the post of Oiler and cleaner is equivalent to that of electrical mistries etc. and the post of electrical mistries carries the pay scale of Rs. 950—1800 whereas the post of Oiler and Cleaner was given the pay scale of Rs. 850—1560 though these two posts carries the same responsibilities so the Oilers and Cleaners are also entitled to the pay scale of Rs. 950—1800. The rep. of the management has argued that these are two different posts and carry the different nature of responsibilities and could not be equated and the Board has sanctioned the different pay scales for the two posts. He has drawn my attention to the Ex. M3 the letter by which the pay scales were adopted by the Board in which it is clearly mentioned at page 3 that oiler and cleaner which carries the pay scale of 350—600 it is revised to 830—1560 whereas mechanical mistri who was in the pay scale of Rs. 400—600/- (pre-revised) has been revised to 950—1800. So the claim of the Union cannot be consider for the grant of pay scale of Rs. 950—1800 for the post of Oiler and Cleaner. It appears that Union has set out its claim on the basis of pay scale of the Oil Filtration set operator which carries the pay scale of Rs. 400—660 (pre-revised) to that of Rs. 950—1800 which is not the factual position regarding the Oiler and Cleaner. So I find no merit in the reference and the same is rejected. Central Govt. be informed.

Chandigarh

26-2-2002

S.M. GOEL, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1433.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन वेटेरीनरी रिसर्च इंस्टिट्यूट के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 203/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-04-2002 को प्राप्त हुआ था।

[सं. एल-42012/189/2000-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 3rd April, 2002

S.O. 1433.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 203/2000) of the Central Government Industrial Tribunal/Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the Management of Indian Veterinary

Research Instt. and their workman, which was received by the Central Government on 03-04-2002.

[No. L-42012/189/2000-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT, LUCKNOW

PRESENT

RUDRESH KUMAR

PRESIDING OFFICER

(D. NO 203/2000

Ref. NO. L-42012/189/2000/IR(DU) DATED 31.10.2000

BETWEEN

SH. DHARAMPAL S/o Sh. Sukhpal C/o Sh. Sunil
Kumar

C.A.R.I., Izatnagar, Bareilly (U.P.) 243001

and

Director, Indian Veterinary Research Institute
Izatnagar, Bareilly (U.P.) 243001

AWARD

By order No. L-42012/189/2000/IR. (DU) dated 31-10-2000, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) and section 2(A) of I.D. Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Dharampal S/o Sh. Sukhpal, Bareilly and Director Indian Veterinary Research Institute, Bareilly for adjudication.

The reference under adjudication is as under :

"WHETHER the action of the Management of Indian Veterinary Research Institute, Izatnagar, Bareilly in Terminating the services of their workman Sh. Dharampal, Ex-daily worker w.e.f. 13-12-88 is legal and Justified ? If not, what relief the workman is entitled and from which date ?

1. Dharmapal, the workman, has impugned his termination dated 13-12-88, alleging the same to be illegal and unjustified. Relief from the said date is also sought.

3. The claim statement states that he was engaged on 6-9-83 and worked upto 12-12-88. The management of the Indian Veterinary Research Institute, Izatnagar, Bareilly verbally without any order in writing or prior notice used to discontinue his service with a view to deny his legitimate claim of regularisation in service. He has also filed documents to show his engagement with the Institute for a considerable length of time. The workman also claimed that some juniors casual labourers were given regularisation in the Institute overlooking his legitimate claim, so, on the basis of his continued service, the relief of reinstatement with back wages and other consequential benefits be awarded.

3. The management has refuted claims of the workman stating that at no point of time, he worked with the Institute for 240 days in a year. It is admitted that

the workman was used to be engaged as casual worker depending upon seasonal/intermittent nature of available work as and when necessary. It is submitted that casual Mazdoors were engaged in seasons for 40 days at a time, 100 days in six months and 200 days in a year. The workman was never engaged beyond the said period and so, his engagement would not entitle him to benefit of section 25-F of the I.D. Act, as he was not in 'continuous service' as envisaged under section 25-B of the said Act. All other claims are denied. Management also has pleaded that Indian Veterinary Research Institute is a Research Institute and is not involved in any commercial activity so, is, not an 'Industry' within the meaning of 2 (j) of the I. D. Act.

4 The workman did not pursue his case and the case proceeded ex-parte. Initially, one Mr. R. C. Pathak was engaged but he discontinued to appear. Later, Mr. Gyan Prakash, Advocate appeared on one date but he, too, did not appear on subsequent dates. The workman was issued notices by this Tribunal on 8-8-2001, 7-9-2001 and 31-10-2001 to appear and participate in the hearing, but he chose not to appear and as such the case proceeded ex-parte.

5. Going by the documents annexed with the statement of claim, only two certificates issued on 14-12-83 and 16-4-87 are relevant. These documents mention engagement period of the workman from 6-9-83 to 6-12-83 and 1-1-87 to 9-2-87 and 12-1-87 to 3-3-87. These certificates are not denied by the management. This period was not 240 days in any year.

6. The management has also filed photo copy of 'Registration Card for Casual Worker'. The workman's working during the period from 15-1-87 to 15-3-87 was 60 days, and in between 2-6-87 to 12-6-87 for 10 days. Registration card for casual worker was also bears photograph and signature of the workman. There is no material to give inference that the periods were shown wrongly in this card. Even payment as per card remained undisputed. The workman did not appear to dispute materials placed by the management. The onus to prove its case that he continuously worked for 240 days in a year, is, on the workman which remained unsubstantiated. Accordingly, the workman failed to prove his entitlement under section 25-F read with section 25-B of the I.D. Act.

7. It is true that certain averments have been made regarding his workings after the date of termination but these workings are not material for determination as to legality of termination order dated 13-12-88. In addition, this dispute is raised after a considerably long period without any explanation and so is barred by laches.

8. The management's submission that Indian Veterinary Research Institute is not 'Industry' is not needed to be decided in the present case.

9. The award is against the workman and he is not entitled to any relief.

10. Award as above.

LUCKNOW

20-3-2002

RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 03 अप्रैल, 2002

का. आ. 1434.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन वेटेरीनरी रिसर्च इंस्टिट्यूट के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 205/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-04-2002 को प्राप्त हुआ था।

[सं. एल-42012/186/2000-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 3rd April, 2002

S. O. 1434.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 205/2000) of the Central Government Industrial Tribunal/Labour Court Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Indian Veterinary Research Institute and their workman, which was received by the Central Government on 03-04-2002.

[No. L-42012/186/2000-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT, LUCKNOW

PRESENT

RUDRESH KUMAR

PRESIDING OFFICER

I.D. No. 205/2000

Ref. No. L-42012/186/2000/IR(DU) Dated 31-10-2000

BETWEEN

SH. Jitendra Prasad S/o Sh. Puranmasi, R/o A/1021
Rajinder Nagar, Izatnagar, Bareilly (U.P.) 243001

AND

Director, Indian Veterinary Research Institute,
Izatnagar, Bareilly (U.P.) 243001

AWARD

By Order No. L-42012/186/2000/IR. (DU) dated 31-10-2000, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) and section 2(A) of I.D. Act, 1947 (14 of 1947) referred this Industrial Dispute between Sh. Jitendra Prasad S/o Sh. Puranmasi and Director, Indian Veterinary Research Institute, Bareilly for adjudication.

The reference under adjudication is as under :

"Whether the action of the Management of Indian Veterinary Research Institute, Izatnagar, Bareilly in Terminating the services of their workman Sh. Jitendra

Parasad, Ex-daily worker w.e.f. 20-9-91 is legal and Justified ? If not, to what relief the workman is entitled and from which date ?

2. By raising present dispute, the workman, Jitendra Prasad, has questioned validity of order dated 20-9-91 by which his services were terminated, as workman, by Indian Veterinary Research Institute, Izatnagar, Bareilly. As per the statement of claim, he was engaged on 5-9-90 and continued to work till 19-9-91. During the said period, he was a daily wage. The management has disputed his working tennure for 240 days are more in any year. The management has also denied various allegations made in the statement of claim, stating further that Indian Veterinary Research Institute is not an 'Industry' within meaning of section 2 (j) of the I.D. Act. It has not denied association of the workman as casual worker. It has filed 'Registration Card for casual workers' relating to the workman which shows that he worked for 40 days in between 5-9-90 to 15-10-90 and another 40 days from 17-10-90 to 27-11-90 and further 34 days from 28-11-90 to 31-12-90. His total working period in 1990 came to 114 days only. In the year 1991 he had worked in between 3-1-91 to 11-2-91 i.e. 40 days, and 14-2-91 to 25-3-91 for 40 days and further 13-12-91 to 21-1-92 i.e. for 40 days. Also, entries in his favour are from 24-1-92 to 3-3-92 for 40 days 6-3-92 to 25-3-92 for 89 days. From this document i.e. the Registration Card for casual workers relied by the management, the total working period do not bring the case of the workman within the definition of 'continuous service' under section 25-B, to entitle him to benefit of section 25-F, I.D. Act.

3. The case proceeded *ex-parte* as the workman despite repeated registered notices did not respond. His A/Rs. Mr. R. C. Pathak and Mr. Gyan Prakash discontinued to appear for reasons best known to them. The entries in the certificates relied by the workman, find references in the casual labour card. Total period shown in the card does not provide relief to the workman as he had not worked for 240 days in any year and is not entitled to benefit of section 25-F read with section 25-B of the I.D. Act, and so the award is against him.

4. The question whether the Indian Veterinary Research Institute, Bareilly is an 'industry' is not needed to decided in this case, in facts and circumstances of the case.

5. Thus, the workman failed to prove continuous service entitling him to benefit under section 25-F of the I.D. Act. Termination of his services w.e.f. 20-9-91 was not illegal or unjustified. He is not entitled to any relief.

6. Award as above.

LUCKNOW

20-3-2002 RUDRESH KUMAR, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2002

का. आ. 1435.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन वेटेरीनरी रिसर्च इंस्टिट्यूट के प्रबंधन के संबद्ध नियोजकों और उनके

कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण लखनऊ के पंचाट (संदर्भ संख्या 197/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 03-04-2002 को प्राप्त हुआ था।

[सं. एल-42012/162/2000-आई.आर. (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 3rd April, 2002

S. O. 1435.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 197/2000) of the Central Government Industrial Tribunal/Labour Court Lucknow now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Indian Veterinary Research Institute and their workman, which was received by the Central Government on 03-04-2002.

[No. L-42012/162/2000-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL
CUM LABOUR COURT, LUCKNOW

PRESENT

RUDRESH KUMAR

PRESIDING OFFICER

I.D. No. 197/2000

Ref. No. L-42012/162/2000/IR(DU) Dated 10-10-2000

BETWEEN

Ishwari Prasad S/o Balbir R/o Bujhia P.O. Bhojipura,
Bareilly (U.P.) 243001

AND

Director, Indian Veterinary Research Institute,
Izatnagar, Bareilly (U.P.) 243001

AWARD

By Order No. L-42012/162/2000/IR. (DU) dated 10-10-2000, the Central Government in the Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) and section 2(A) of I.D. Act, 1947 (14 of 1947) referred this industrial dispute between Sh. Ishwar Prasad S/o Sh. Balbir and Director, Indian Veterinary Research Institute, Bareilly for adjudication.

The reference under adjudication is as under :

"Whether the action of the Management of Indian Veterinary Research Institute, Izatnagar, Bareilly in terminating the services of their workman Sh. Ishwari Prasad, Ex-daily wage w.e.f. 15-7-88 is legal and justified ? If not, to what relief the workman is entitled and from which date ?"

2. Ishwari Prasad, the workman, has impugned his oral termination w.e.f. 15-7-88 and has claimed reinstatement with other consequential benefits.

3. As per the averments in the statement of claim, he was engaged as daily wage worker/casual labour in Indian Veterinary Research Institute, Izatnagar, Bareilly on 16-9-87 and continued to work till 14-7-88. The management without any notice or written order, used to discontinue his services to deny continuity in service and other service benefits. His juniors were regularised but his claim was over looked. He continuously served from 16-9-87 to 14-7-88 i.e. for more than 240 days in the preceding 12 months but was not given benefit under section 25-F of the I.D. Act. Some averments have also been made regarding his workings subsequent to date of termination and so, for the purposes of this adjudication, analysing legality of the termination order dated 15-7-88, such averments are not very material.

4. The management has not denied association of the workman with the Institute. However, it has denied that the workman had worked for 240 days continuously in preceding 12 months of his discontinuance. The management has admitted certificates filed by the workman as annexure of the claim statement, wherein he was shown to have worked from 16-9-87 to 19-10-87, 12-10-87 to 30-11-87 and 3-12-87 to 21-12-87 and further 3-4-88 to 12-5-88, 15-5-88 to 23-6-88 and 26-6-88 to 14-7-88.

5. The submissions of the management are: that Indian Veterinary Research Institute is not an 'Industry' as defined under section 2 (j) of the I.D. Act, since its main object is to pursue research and not involve in commercial activities. Apart, the nature of works require engagement of the casual workers in seasonal/intermittent nature of works and the Institute as a matter of practice engage casual Mazdoors for 40 days at a time, 100-days in six months and 200 days in a year. The workman was also associated with the Institute and a Registration Card for casual worker, in his name was also prepared by the Institute as early as on 19-11-87. A photo copy of this casual labour card is on record which bears photograph and signature of the workman. The period shown in the certificates relied by the workman, also find reference in this casual labour card. According to the workman, his services were terminated w.e.f. 15-7-88 but this casual labour card mentions that he was also had worked from 1-11-88 to 10-12-88, 13-12-88 to 21-1-89 and 24-1-89 to 11-2-89. Entries in this casual labour card can not be disputed as these entries were made in usual course of working. No materials is placed on behalf of the workman, to justify inference of any motive to manipulate this document.

6. The workman did not appear to contest his case and ex-parte proceeding was ordered. At the beginning, one Mr. R.C. Pathak appeared to represent the workman but subsequently, he discontinued and so, workman was given notices. On one date one Mr. Gyan Prakash, Advocate appeared but he also absented w.e.f. 6-7-2001. The workman was issued successive registered notices on 8-8-2001, 7-9-2001 and 31-10-2001 without any response.

7. In light of the stated facts there are no materials to give inference that the Ishwari Prasad had worked continuously for 240 days in a year to bring his case in the definition of 'continuous service' defined under section 25-B of the I.D. Act, entitling him to benefit under section 25-F of the said Act. Action of the management, thus, was justified in discontinuing the

services of Ishwari Prasad w.e.f. 15-7-88 as he had no entitlement to the post of daily wagger. Accordingly, the workman is not entitled to any relief.

8. Award as above.

Lucknow RUDRESH KUMAR, Presiding Officer
21-3-2002

नई दिल्ली, 3 अप्रैल, 2002

का. आ. 1436.—औद्योगिक विवाद आधनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार डाक विभाग के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चंडीगढ़ के पंचाट (संदर्भ संख्या 147/91) को प्रकाशित करती है, जो केन्द्रीय सरकार को 3-4-2002 को प्राप्त हुआ था।

[सं. एल-42012/12/91-आई आर-(डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 3rd April, 2002

S.O. 1436.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 147/91) of the Central Government Industrial Tribunal/Labour Court Chandigarh as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management Postal Department and their workmen, which was received by the Central Government on 3-4-2002.

[No. L-42012/12/91-IR(DU)]

KULDIP RAI VERMA, Desk Officer
ANNEXURE

**BEFORE SHRI S.M. GOEL, PRESIDING OFFICER,
CENTRAL GOVT. INDUSTRIAL TRIBUNAL-CUM-
LABOUR COURT, CHANDIGARH**

Case No. ID 147/91

Kumari Lakhvir Kaur daughter of Shri Sadhu Singh C/o B.R. Prabhakar, President Lok Mazdoor Sansthan 63-C Kailash Nagar, Model Town, Ambala City.

...Applicant

Versus

Senior Supdt. of Post Office,

Sangrur Division,

Sangrur.

...Respondent.

Appearances

For the Workman : None

For the Management : Sh. I.S. Sidhu

AWARD

(Dated 25-2-2002)

The Central Govt. vide Notification No.L-42012/12/91-I.R.(D.U.), dated 9th of October, 1991 has referred the following dispute to this Tribunal for adjudication :

"Whether the action of the Supdt. Post Offices Sangrur Division, Sangrur, in dismissing the services of Miss Lakhvir Kaur, D/o Shri Sadhu Singh, Extra Departmental branch post office, Bogiwal w.e.f. 5-9-90 was legal and justified? If not, to what relief the concerned workman is entitled to and from what date?"

2. The applicant in claim statement has stated that she was employed as Extra Departmental Branch Post Master Bhogiwal. It is stated that her work and conduct was satisfactory except a fictitious case of so called misappropriation of two money orders of Rs. 900 and Rs. 36 as commission. The resident got a defective enquiry conducted which was not based on any evidence and which was not according to the principle of natural justice. It is also alleged that charges were not proved during the enquiry proceedings. The appeal filed by the applicant was rejected without any cogent reason. She has prayed that she be reinstated in service with full backwages and continuity of service.

3. The respondent in written statement has taken preliminary objection that service conditions of Extra Departmental Agents are regulated under P & T EDAs (Service and Conduct Rules), 1964 and thus she can not be treated as casual labour and this Court has no jurisdiction in her case. On merits it is pleaded that applicant while working as EDBPM from 11-3-1983 to 25-3-1988 misappropriated the amount of two money orders for which fair and proper enquiry was conducted and she was awarded the punishment of removal from services and the allegations levelled by the applicant are totally baseless and false and no violation of natural justice has been made by the disciplinary authority and that the punishment of removal from service was the proper punishment and she is not entitled to any relief.

4. Replication was filed by the applicant reiterating the claim made in the claim statement.

5. In support of her case she filed her own affidavit Ex. W1 and documents Ex. W2 to W3. The applicant also appeared for cross-examination. The management produced the affidavit of Shri M.S. Jhita who tendered his affidavit Ex. M1 and enquiry proceedings Ex-M2.

6. I have heard the learned counsel for the management and have gone through the written arguments filed by both the parties. First and foremost question raised by the counsel for the management is that EDSs are not the workmen and the department of post office is not an 'industry' so this Court has no jurisdiction in the case in hand. the learned counsel for the management has referred me the case of Sub Divisional Inspector of Post Vaikam Vs T.H. Joiceph 1996 S.C.C.(L&S) 1012 wherein the Hon'ble Supreme Court has held that EDA are civil servants and do not belong to the category of workman. The learned counsel has also referred another case law of S.B. Makawana Vs. Union of India 1997(2) ATJ 651 wherein it was held that Post Offices are not an industry and EDA are not workmen. The learned counsel for the workman has drawn my attention to the Judgement of the Hon'ble Supreme Court in General Manager Telecom Vs. S. Srinivasa Rao, AIR 1998 Supreme Court page 656 wherein this case law has been overruled and it has been held that Telecom Department of Union of India is an Industry and, therefore, in view of the set case law I may hold that postal department is an Industry and the applicant comes under the definition of 'workman' as defined under Section 2(s) of the Industrial Disputes Act 1947. I may also hold that designation does not matter. It is only the nature of duties which categorises him as to whether he is workman or not under the definition of workman under the I.D. Act, 1947. It also does not matter as to whether he was doing manual or clerical work for hire or reward.

7. The representative of the workman has argued that the enquiry conducted against the applicant was against the principle of natural justice and the same is vitiated and the applicant is entitled to reinstatement with full back wages. I have gone through the entire proceedings of the enquiry conducted against the applicant. I find that the enquiry was conducted by the enquiry officer extensively and the applicant was given full opportunity to defend herself. She was allowed to examine the documents and allowed to cross-examine the witnesses of the management. The contention of the applicant that she was not allowed personal hearing by the appellate authority before dismissing her appeal is of no significance as it was not proved by her in this Tribunal. In my considered opinion the enquiry conducted against the applicant is fair and proper and in accordance with the principle of natural justice.

8. In view of the above discussions made in the earlier paras, it is held that the action of Superintendent of Post Office Sangrur Division in dismissing the services of Miss Lakhvir Kaur is fully justified and she is not entitled to any relief. The reference is answered accordingly. Central Govt. be informed

Chandigarh.

25-2-2002

S M GOEL, Presiding Officer.

नई दिल्ली, 5 अप्रैल, 2002

का.आ. 1437.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इण्डियन रेड क्रॉस सोसाइटी के प्रबंधन के संबंध में निदेशों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण-कम-लेबर कोर्ट, नई दिल्ली के पंचाट (संदर्भ संख्या 58/2000) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-04-2002 को प्राप्त हुआ था।

[सं. एल-42012/47/2000-आई. आर. (डी.यू.)]

कुलदीप राय वर्मा, डेस्क अधिकारी

New Delhi, the 5th April, 2002

S.O. 1437.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 58/2000) of the Central Government Industrial Tribunal-cum-Labour Court, New Delhi as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Indian Red Cross Society and their workmen, which was received by the Central Government on 05-04-2002.

[No. L-42012/47/2000-IR(D.U.)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

IN THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL-
CUM-LABOUR COURT,
NEW DELHI

Present : Shri B.N. Pandey, Presiding Officer

I.D. No. 58/2000.

Ms. Ram Kumari,
D/o Shri Mool Chand,
R/o 22-C Mohalla Hodel,
Distt. Faridabad, Haryana.

Versus

1. Indian Red Cross Society,
446, 'A' Wing, Health Wing,
Nirman Bhawan,
New Delhi-110001
Through its Chairman
2. Indian Red Cross Society,
Distt. Branch,
Red Cross Bhawan,
Sector 12, Faridabad, Employer
Through its Secretary.

AWARD

The Central Government in the Ministry of Labour vide its Order No. L-42012/47/2000/IR (DU) dated 30-5-2000 has referred the following Industrial dispute to this Tribunal for adjudication :

"Whether the action of the management of Indian Red Cross Society, Faridabad in terminating the services of Smt. Ram Kumari (Handicapped) w.e.f. 1-7-97 is just and legal ? If not, to what relief the workman is entitled ?"

2. The case of the workman in short as claimed in statement of claim is that she was employed against the handicapped quota on verbal orders of Chairman, Red Cross Society of India, State Branch, Faridabad and Deputy Commissioner, Faridabad w.e.f. 1-5-1995 for issuing/selling red cross cards (specimen enclosed as Annexure 'A' in connection with Registration of Sale/Purchase of deeds/documents etc. The appointment orders later issued by Sub-Divisional Officer, Palwal contain following terms of appointment :

(a) the appointment was temporary and liable to be terminated at any time, and

(b) wages would be as per rates fixed by Dy. Commissioner A photo copy of these orders and experience certificate showing date of appointment is annexed hereto and collectively worked as Annexure 'B', that the Society was set by an Act of the Federal Assembly in 1920 which was amended by the Parliament in 1992 and is a body corporate. The President of India is the President of the Society (Section 4 A) in terms of Section 4B of the Act, the Chairman and six members of the Managing Body of the Employer/Society are nominated by the President of India; that as per Section 4C of the Act, the Managing Body shall with the previous approval of the President of India, appoint a Secretary General and Treasurer of the Society; that under Section 4E of the amended Act, the President of India has the powers to supersede the Managing Body of the Society; that by virtue of the above and other provisions contained in the Act, which will be adverted to at the appropriate time, the Central Government exercises deep and pervasive control over the Employee-Society; that the workman worked in Tehsil Office Palwal uninterruptedly from 1-5-95 to 31-7-97 to the full satisfaction of the Employer-Society on rates of wages fixed by Dy. Commissioner, Faridabad. Monthly wages of the workman from the beginning of the service till her

illegal termination remained Rs 1565.00 per month and no increase/increment was given to her, that during the year 1997 the workman was on family way and expecting during the month of June/July, 1997. Being handicapped, the workman was finding it difficult to work properly during advanced pregnancy and therefore the workman made a request to the employer viz Red Cross Society of India, Faridabad Branch through S.D M. Palwal for grant of Leave of Absence from 1-6-97 to 31-7-97 photostat copy of which is Annexure 'C'; that the workman delivered on 16-7-97 and after expiry period of leave applied for, reported back for duty at Tehsil Palwal/SDM Palwal but was not taken on duty, that the Chairman, Indian Red Cross Society Branch Faridabad/Dy. Commissioner, Faridabad as also S.D.M. Palwal had not refused or turned down the application of the workman for leave of absence applied for on child delivery nor they had served any order on the workman terminating her service for absence from duty. Therefore, workman approached to all concerned authorities for taking her back on duty but without any effect, that on extortions of the workman, Distt. Branch of Indian Red Cross-Society, Faridabad wrote to S.D.M., Palwal to reconsider starting of issuing/selling of Red Cross cards at Palwal. A photocopy of this letter dated 4-2-99 is annexed hereto as Annexure 'D' As there was no positive response to her verbal extortions, the workman made petitions firstly to S D M., Palwal and secondly to Chairman, Indian Red Cross-Society, Distt. Branch Faridabad and Dy. Commissioner, Faridabad who was the employer of the workman. The management did not issue any termination orders to the workman as per stipulation in appointment letter issued to her. That after exhausting all channels for redressal of her grievance, the workman raised an Industrial dispute Assistant Labour Commissioner (Central), Faridabad which resulted in the present reference for adjudication to this Hon'ble Tribunal, that the Society has acted most un-judiciously by not allowing the workman to resume duty after her return from maternity leave. That the activities carried on by the employer Society as per the objects given in the Act come within the ambit of "industry" as defined under section 2(j) of the I.D. Act, 1947 hereinafter referred to as 'the Act'. The activities are organised necessitating employment of workers in the service of the Society. Therefore, any termination of Service has to be in consonance with the provisions of the Act, that the workman worked in the establishment of Society from 1-5-95 to 31-7-97 i.e. for the period of over two years without break. Therefore discontinuing/terminating her services in the manner it has been done by the Employer-Society amounts to retrenchment under Section 2(oo) of the Act and the Employer Society was legally required to comply with the provisions of Section 25F of the Act which it failed to do and hence the termination is ex-facie illegal and the workmen is entitled for reinstatement with back wages and other consequential benefits; that Red Cross Society of India being industry under section 2(j) of the Act is an 'industrial establishment' under Section 2(ka) of the Act also attracts the provisions of Maternity Benefit Act, 1961 [Section 3 (iv-a)] and therefore the workman is also entitled for maternity benefits under section 5 of Maternity Benefit Act and therefore termination of services of the workman on account of such absence from work is violation of section 12 of the said Act of 1961 and hence illegal. The action of the management is grossly unjust and illegal and it is submitted that the workman be reinstated with full back

wages and justice done to a poor handicapped person struggling for her survival with her handicap and physical deformities on the following among other—

Grounds

(A) Because the workman has put in more than 240 days work,

(B) Because the workman did not commit any misconduct and has not been issued any charge-sheet,

(C) Because the workman has not been retrenched in compliance with the mandatory provisions of Section 25F of the Act,

(D) Because the benefits of Maternity Benefits Act 1961 are available to all women workers,

(E) Because termination of the services of the workman on account of delivery of child amounts to gender discrimination and arbitrariness on the part of the Employer-Society and constitutes not only a violation of her right to life under Article 21 of the Constitution of India but also violation of human right, and

(F) Because the action of the Employer-Society in not permitting the workman to resume duty from 1-8-97 effectively amounts to illegal termination of her service without complying with statutory provisions

It is therefore prayed that the reference be answered in favour of the workman and against the management and in particular direct the Employer-Society to reinstate the workman with full benefits of continuity of services, back wages etc award payment of interest on the arrears of wages wrongfully withheld by the Employer-Society with costs and any other relief as this Hon'ble Tribunal may deem fit

3 In the written statement the management took preliminary objection that the reference is bad for misjoinder and non-joinder of the parties as such, the Indian Red Cross Society, Palwal through its Chairman has not been made party in the present reference under which the workman Ms Ram Kumari had worked, that the respondent society does not come under the purview of the Industry as per section 2(J) of the I D Act 1947, that the workman has no cause of action to raise an industrial dispute against the answering respondents as such her services have never been terminated by the respondents. Rather, she has failed to join and perform her duties in spite of repeated notices and abandoned and lost lien on the job by her own acts and conducts, that there exists no industrial dispute between the workman and the respondents as such no demand notice under section 2A of the Act has ever been raised and served upon the answering respondents before filing the dispute, that the applicant does not come under the definition of workman under section 2(s) of the I D Act, 1947 being Sales Girl, that the workman is gainfully employed since the day of abandonment and losing lien on her service, for better prospects and benefits, that the workman has not come with clean hands before the Hon'ble Court and concealed and suppressed the real facts from the court. In view of the above the claim of the workman is liable to be dismissed without going into the merits. However, without prejudice to the above the answering respondents submit reply on merits as under —

1 That the contents of para 1 of the claim statement are admitted being matter of fact and record, that the contents of para 2 are admitted to the extent that the

workman was appointed on verbal orders of the Chairman of Red Cross Society of India-cum-Dy Commissioner, Faridabad w e f 1-5-95 for selling red cross cards in connection with the registration work performed in the precinct of the Teh Palwal, vide order dated 27-6-95 as per terms and conditions stipulated therein, on D C rates and rest of the contents are incorrect, false, wrong and specifically denied, that the contents of para 3 are matter of record, hence does not warrant any reply, that the contents of para 4 are also legal and matter of record, hence does not warrant any reply, that the contents of para 5 are also legal one and matter of record and hence do not warrant for any reply. Same is the reply Contents of para 6 are also legal one and matter of record. Contents of para 7 are wrong and denied. However, it is submitted that the lady workman Ms Ram Kumari was ordered to be appointed by the Dy Commissioner, Faridabad, keeping in view her physically handicapped condition and although there existed no vacancy/post but on humanitarian ground, a post was created and she was appointed as Sales Girl to sell the Red Cross Cards on a certain price fixed by the Red Cross Society, Palwal, purely on temporary basis and her wages were fixed at Rs 1450/- per month on D C rates and she was paid wages accordingly regularly and her last drawn salary was Rs 1565/- per month which are applicable to temporary employees and earned wages were paid upto the month of April, 97 to the applicant workman. It is further submitted that from 1-5-97 the applicant workman Ms Ram Kumari started to remain absent from her duties without prior permission of leave as a result of which working of selling red cross cards had come to a stand still and the answering respondents had issued several notices/reminders regarding absence from her duties vide letters dated 13-5-97, 30-5-97, 26-6-97, 10-7-97, 21-8-97 and 16-10-97 and lastly final notice dated 17-11-97. By all these notices the applicant workman was advised to resume her duties immediately and explain reason for her unauthorised absence from duty. Some of such letters were pasted at her house because she had refused to accept sometime and avoided service of notice on one pretext or the other intentionally and knowingly and miserably failed to report for her duties in compliance of the notices sent to her by the answering respondents. Hence, in view of the above facts and circumstances, the answering respondents have abolished the said post which was created only to help a physically handicapped woman while there is no post at all at the time of her appointment. It was therefore presumed that the applicant Workman no longer interested in her job and abandoned it by her own will and lost her lien on the job. Thereafter no person was employed by the respondents to perform the work which workman was doing and the said post was totally abolished. Hence, the applicant-workman has no right to claim now for the said post. Even she is not a workman under the definition of section 2(s) of the I D Act 1947 as such the Sales Girls are not to be treated as workman under the I D Act.

2 That the contents of para 8 of the claim are wrong and denied. It is also denied that the workman was on her family way and expecting the delivery during the month of June/July 1997 since the workman has never submitted any application for maternity leave hence the allegation made in the claim statement under reply are totally wrong and without any truth. However, it is submitted that the applicant started to remain absent from duty w e f 1-5-97 without prior information or

sanction of leave from the competent authority as stated in the foregoing paras. The contents of para 9 of the claim are denied for want of knowledge. It is further stated that the contents of para 10 are wrong and denied. However, it is submitted that the workman never submitted any leave application for sanctioning of leave or had given any prior information for the absence. It is further brought to the kind notice of the Hon'ble Court that till the date of abolishing the said post or thereafter, the answering respondents have never received a single correspondence from the applicant workman and she remained absent continuously without prior information or sanction of leave and she had abandoned her job and lost lien on the job by her own act and conduct as discussed by the answering respondents in the foregoing paras and do not want to repeat again to avoid further repetition: that the contents of para 11 of the claim-statement are incorrect, wrong, false and denied and the applicant workman has to produce strict proof in support of her contentions. It is submitted that there was no post of Sales Girl on which the workman was performing her duties during the period and after her absence from duties the administration has taken a decision to abolish the said post and still no person has been employed for such work as per record of the respondents. Rather, the applicant has abandoned her job and lost lien on her job by remaining absent without prior sanction of leave, that the contents of para 12 of the claim are false and wrong, that the contents of para 13 of the claim are wrong and denied. Contents of para 14 are wrong and denied. It is stated that the management does not come under the definition of industry as defined under section 2(j) of the I.D. Act, 1947. It is alleged that contents of para 15 are wrong and denied. However, it is submitted that the applicant workman was appointed only from 1st May, 95 but w.e.f. 1-5-97 she started to remain absent from her duties without prior permission and did not care to join her duties or send any reply to several notices served to her mentioning reasons for her absence. Para 16 is denied. In view of the above facts and circumstances the workman is not listed for reinstatement in service with continuity of service and full back wages or any other relief as prayed for. The contents of grounds from A to F are wrong and denied. She has absented herself from duty without any prior of information and sanction of leave and not reported for duty in spite of several notices sent to her. Hence completing more than 240 days in service does not help her and question does not arise to commit any misconduct or to issue any charge sheet. The workman is not entitled to any retrenchment compensation or notice pay as per section 25-F of the Act. In view of the above prayer of the workman is denied. She is not entitled for any relief or other benefits of reinstatement into service with continuity of service and full back wages etc. or to award any payment of any nature or arrears of wages.

4. In the rejoinder the facts stated in the claim are reiterated and facts stated in the written statement are denied.

5. Today at this stage of the case on 15-3-2002 the representative/counsel of the workman filed an applicant signed by him and also the workman praying that the workman does not want to pursue the claim petition. Hence she/the workman may be allowed to withdraw the claim and the reference may be disposed of as no dispute exists. The application was not opposed by the

other side. Therefore, the application is allowed and in view of the prayer made therein the reference is disposed of accordingly as no dispute exists between the parties. No Dispute Award is given.

Dated March 21, 2002

B. N. PANDEY Presiding Officer

नई दिल्ली, 5 अप्रैल, 2002

का.आ. 1438.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मिनेरल्स एण्ड मेटल्स ट्रेडिंग कॉर्पोरेशन लिमिटेड के प्रबंधन के संवद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, नं. 2, मुम्बई के पंचाट (संदर्भ संख्या सी जी आई टी-2/179 ऑफ 99) को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-04-2002 को प्राप्त हुआ था।

[सं. एल-42012/94/99-आई आर-(डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 5th April, 2002

S.O. 1438.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. CGIT-2/179 of 99) of the Central Government Industrial Tribunal/Labour Court No. 2, Mumbai now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Minerals & Metals Trading Corpn. Ltd., and their workmen, which was received by the Central Government on 5-04-2002.

[No. L-42012/94/99-IR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL, NO. II, MUMBAI
PRESENT

S. N. SAUNDANKAR, Presiding Officer

Reference No. CGIT-2/179 of 1999

EMPLOYERS IN RELATION TO THE
MANAGEMENT OF THE GENERAL MANAGER (P
& A), MINERALS & METALS TRADING CORPN.
LTD.

The General Manager (P&A),
Minerals & Metals Trading Corpn. Ltd.,
Mittal Tower, A&B Wing,
I & II floor, Nariman Point,
Mumbai-400 021.

AND

Shri Bapu Ramchandra Kalaskar
Parishram, Devikumavati Mandir Marg,
P.O. Srivardhan,
Raigad 401 110.

APPEARANCES :

FOR THE EMPLOYER : Mr. B. D. Birajdar
Advocate.
FOR THE WORKMAN : Mr. Jaiprakash
Sawant, Advocate.

Mumbai, the 30th January, 2002

AWARD

The Government of India, Ministry of Labour, by
its Order No. L-42012/94/99/IR(DU), dts. 26-08-1999, in

exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, have referred the following dispute to this Tribunal for adjudication

"Whether the action of the management of Minerals & Metals Trading Corpn. Mumbai in terminating the services of Sh. Bapu Ramchandra Kelaskar during his mental agony is legal and justified? If not, to what relief the workman is entitled"

2. Workman Shri Kelaskar, was appointed in the Corporation in 1969. He was promoted later on. By Statement of Claim (Ex-6) Kelaskar contended that he was granted medical leave from 19-3-84 to 12-5-84. He was to resume duties on 13/5/84. However because of illness he could not. As advised by the management he got examined from the Civil Surgeon, Raigad on 30-7-86, but the Civil Surgeon advised him to approach Neurology Department of J.J. Hospital, Mumbai for medical check-up on 5-12-86. However, that was not affordable to him and that he continued treatment at J.J. Hospital, and thereafter he was certified fit to resume his duties and had produced certificates in office. It is the contention of Kelaskar that though he produced medical certificate dtd. 22-10-96 he was not allowed to resume his duties saying his services were terminated w.e.f. 29-11-88 and consequently his name was struck off from the roll on the ground of unauthorised absenteeism from 13-5-84. He averred that due to his illness he could not resume duty. However the management with unkind attitude mercilessly displaced him from service during his mental agony. He has raised the dispute on his illegal termination before the Regional Labour Commissioner (C), but in vain. He therefore contended his termination during his illness being illegal, the management be directed to reinstate him with full back wages.

3. Management, Corporation, resisted the claim of workman Kelaskar, by filing Written statement (Exhibit-8) contending that the reference is belated and suffers from laches, hence not maintainable. It is contended the cause of action on termination of workman was taken place on 29th November, 1988 and that dispute was raised in 1999 i.e. after about 11 years. It is the contention of Corporation that the workman was appointed on 16th March, 1973 and that he was promoted as officiating inspector in 1979 and thereafter as inspector w.e.f. 22-12-80 and that by virtue of the nature of the 'duties as inspector' he is in not a 'workman within' the definition of Section 2(s) of the Industrial Disputes Act and on this count also the reference is not maintainable. It is the contention of Corporation that workman was granted medical leave from 19-3-84 to 12-5-84. He had submitted medical certificates dtd. 22-10-96. He was absent from March '84 to October 96 due to continued ill-health. He was apporised by several letters by the management to resume duty but, he failed, and that after waiting for about 4½ years there was no alternative except to terminate the services of workman. It is contended, in accordance with service regulations which are applicable to the workman provided even termination of service, without notice on payment of compensation on his being declared mentally or physically disable for continuance in service by the approved medical officer. He was admittedly mentally disabled and consequently unable to perform duties, therefore his case does not cover under the definition of retrenchment under the

Industrial Disputes Act. It is further the contention of Corporation that the workman remained absent continuously from May '84 without sanctioned leave/permission, which amounts to misconduct under the Employer's conduct, Discipline and Appeal Rules, 1975. It is contended the order of termination of workman was not assailed by an appeal under Rule-33 and that he could not avail the benefits available under the scheme which provide for medical benefits. He had accepted the termination order and the consequent relief of gratuity in full and final settlement of the account. For all these reasons, it is contended the action of the management is totally justified and therefore workman does not seek any relief, consequently prayed to dismiss his claim.

4. The workman by way of Rejoinder (Exhibit-9) reiterated the recitals in the claim and denied the averments in the Written Statement adding that during his continued illness he was repeatedly approaching the management for his reinstatement in service. He was declared fit in 1996 and that before resuming on duty, he was terminated which amounts to retrenchment. It is his contention that he was not made to know on his right to appeal. It is contended his termination without holding inquiry, is void.

5. On the basis of the rival pleadings of the parties my Learned Predecessor framed issues at Exhibit-11. In that context workman Kelaskar files his affidavit by way of Examination-in-Chief (Exhibit-14) and closed evidence vide purshis (Exhibit-15). It is seen from the record during the pendency of the matter workman Kelaskar reported expired on 29-11-2000 vide purshis (Exhibit-16). Consequently his legal Representative wife Shakuntala Bapu Kelaskar was brought on record. On behalf of the management, Senior Manager, Mr. Chaturvedi filed affidavit by way of Examination-in-Chief (Exhibit-18) and closed evidence vide purshis (Exhibit-21).

6. Workman filed written submissions (Exhibit-22/24) alongwith the zerox copies of the pleadings. Management filed written submissions (Exhibit-23). On perusing the record as a whole, and hearing the counsel at length, I record my findings on the following issues for the reasons mentioned below :—

Issues	Findings
1. Whether the reference suffers from laches?	No.
2. Whether the workman did not respond to the employers notices to join the duties?	Yes.
3. Whether the action of the management in terminating the service of Kelaskar during his mental agony is legal and justified?	Yes
4. If not, to what relief the workman is entitled to?	As per order below

REASONS

7. Admittedly Shri Kelaskar was working as Inspector in permanent category, and he had received gratuity amount under cheque by virtue of the termination order dtd. 29/11/88, whereas he raised dispute in 1999. The Learned Counsel, Mr. Birajdar, for the Corporation submits that the delay of 11 years itself makes the reference untenable. He submits the approach of the workman holding the responsible post of inspector does

not deserve for sympathy even under the law of equity. He urged that in catena of judgments Their Lordships held "whether relief can be declined on the ground of delay and laches depends on the facts and circumstances of the case. In *Balbir Singh Vs. Punjab Roadways and Anr.* 2001 SEE (L&S) 1162 Their Lordships considering the facts therein held "due to delay reference was not maintainable." However at the same time, Their Lordships observed "Relying on this count relief should be appropriately moulded at the discretion of the Tribunal depending on the facts and circumstances of the case". According to workman he was continued illhealth. He was unfit to work since 1980 due to Epilepsy. Considering the facts on record that workman was mentally sick, in the case in hand, relief cannot be declined on the ground of delay and laches. Consequently issue No. 1 is answered in the negative.

8. The crucial point in the case in hand is "Whether action of the management in terminating Kelaskar is justified?" Admittedly workman was on medical leave from 19/3/84 to 12/5/84 and thereafter he did not resume duty on the ground that he was continued illhealth. Hence not fit to work. Management terminated the service of Kelaskar on two grounds i.e. habitual unauthorised absence from duty and for continued ill health and not fit to perform his duties. It is seen from the record, workman was terminated on 29/11/88 without holding inquiry. Workman admits in his cross-examination para 7 that there was no leave at his credit when he was absent from his duties dts. 19/3/84 to 12/5/84. He was apprised by the management by letter dtd. 7/5/86 and 14/7/86, that his ~~application~~ were rejected which he had not replied. It is clearly seen from his cross-examination, para 8 that management had advised him to attend J.J. Hospital for investigation and that he was called by the said hospital on 7/1/87, but, he did not attend. He admits he was aware that he was entitled to medical facilities from the company, but, he did not avail. He had obtained the certificate from J.J. Hospital dtd. 23/10/96 and submitted the same, in the office of the Corporation, after the order of termination in 1988. It is seen from the record workman was to resume on duty from 13/5/84, however, for the first time, he produced medical certificate of his fitness dtd. 23/10/96 in the year 1996. He was silent from 1984 till 1996. Admittedly no leave was at his credit nor he had, apprised on his absence which shows he remained absent from duty unauthorisedly from 13/5/84 till the date of termination, i.e. 1988.

9. So far continued ill-health of workman is concerned, he admits in cross-examination, para 8 that he was not fit to work since 1980. He was working in the permanent post of inspector. If he was admittedly not fit to work due to epilepsy question of his termination on the part of employer was infact a formality.

10. Admittedly by virtue of termination order dtd. 29/11/88 workman had received cheque of gratuity from the employer, towards the final settlement. This shows he was aware on the termination order in the year 1988, despite that he did not assail the same before the Higher authority. The Learned Counsel Mr. Sawant for the workman submits that the workman was not aware on the provision and therefore not assailed is devoid of substance, when workman was working as inspector in a responsible category. No doubt he was mentally sick from 1980, however it is seen from the record, his wife

had made correspondence and consequently she could have moved to that effect, however, failed.

11. The Learned Counsel Mr. Sawant, urged with force that the fact that name of workman was struck off from the roll without holding inquiry, amounts to illegal termination under the provisions of the Industrial Disputes Act. He submits that it is obligatory upon the employer who wants to retrench the workman to give notice and to hold inquiry as holding of departmental inquiry particularly where it is so provided in the service regulations or standing order is a rule and dispensing with is an exception, thereby according to him management did not follow the Principles of Natural Justice. He urged in the case on hand no notice was given, no chargesheet was issued nor inquiry was held, and therefore the termination is illegal, for which he relied on *Jaishankar Vs. State of Rajasthan AIR 1966 SC*, pg. 492 wherein it is ruled :

"Removal from service without giving notice to show cause is illegal."

On the other hand, the Learned Counsel Mr. Birajdar submitted that in case of unauthorised absence action of the employer in treating the employee voluntarily retired is upheld, as non-compliance of Principles of Natural Justice unless causing prejudice, held does not automatically entitle to relief under Article-226. He submits that according to workman himself, he was and is unfit and under such circumstances inquiry was a futile exercise. In *Sonsters India Ltd. Vs. M. Mohammad Yabub and Anr.* 2001 SCC (L&S) 148, Their Lordships observed:

"provision enabling the management to terminate the services of workman cannot be invoked automatically and when question of absenteeism could only be answered provided opportunity of hearing, and further held that there could not be any automatic termination of workman without compliance of the principles of Natural Justice."

12. In *Kumaon Mandal Vikas Nigam Ltd. Vs. Girja Shankar Pant and ors.* 2001 SCC (L&S) 189, their Lordships observed :

"The doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice. In *Baldwin* case the doctrine held to be incapable of exact definition but what a reasonable man would regard as fair procedure in particular circumstances. A question arises as to who is a reasonable man. In India, a reasonable man cannot but be a common man similarly placed.

Although over the years there has been a steady refinement as regards the doctrine of natural justice but no attempt has been made and, infact, cannot be made, to define the doctrine in a specific manner of method. Strait-jacket formula cannot be made applicable but compliance with the doctrine is solely dependent upon the facts and circumstances of each case. The totality of the situation ought to be taken note of and if on examination of such totality, it comes to light that the executive action suffers from the vice of non-compliance with the doctrine, the law courts ought to set right the wrong inflicted upon the person concerned and to do so would be a plain exercise of judicial power. As a matter of fact the doctrine is now termed as a synonym of fairness in the concept of justice and stands as the most-accepted methodology of a governmental action."

13. The doctrine of Natural justice as explained in Kumaon Mandal Vikas Nigam Ltd. case in totality of the situation is to be taken note of and if on examination of such totality it comes to light that the executive action suffers from the vice of non-compliance with the doctrine the law courts in that event ought to set right the wrong inflicted upon the person concerned and to do so would be a plain exercise of Judicial power. As a matter of fact the doctrine is now termed as a synonym of fairness in the concept of justice and stands as a most accepted concept or methodology of governmental concept. If we consider the facts on record in the light of the decisions referred to above I find sustenance in the submission of the Learned Counsel for the management Shri Birajdar as it is apparent that workman remained absent without leave, at his credit, he was admittedly unfit to work and under such circumstances hardly can be said that principles of Natural Justice not observed by the management in terminating the service of workman.

14. While parting with the matter the Learned Counsel Mr. Sawant submits that, termination was effected during the mental agony of workman therefore sympathetic point of view, termination needs interference. True it is since the year 1980 workman was suffering from epilepsy, consequently was unfit to work. He was suffering from mental agony, which was unfortunate. The employee like workman, working in the capacity as an inspector though asked to get examined from the J.J. Hospital under the medical scheme, not approaching the Doctors concerned, years together, on termination receiving the gratuity, hardly can be said that the action of management is inhuman. In this view of the matter the action of the management can safely be said to be legal and justified. Consequently his legal representatives brought on record vide (Ex-16), is not entitled to any reliefs. Issues Nos. 2, 3 and 4 are therefore answered accordingly and hence the order :—

ORDER

The action of the management of Minerals & Metals Trading Corpn., Mumbai in terminating the services of Sh. Bapu Ramchandra Kelaskar during his mental agony is legal and justified.

S.N. SAUNDANKAR, Presiding officer

नई दिल्ली, 5 अप्रैल, 2002

का.आ. 1439.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नवल सांस एण्ड टेक्नोलॉजी लेबोरेट्री के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, विशाखापत्तनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-4-2002 को प्राप्त हुआ था।

[सं. एल-14012/48/2001-आई आर-(डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 5th April, 2002

S.O. 1439.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 147/91) of the Central Government Industrial Tribunal/Labour Court Visakhapatnam as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Novel Sciences & Technology

Laboratory and their workmen, which was received by the Central Government on 5-4-2002.

[No. L-14012/48/2001-JR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL CUM- LABOUR COURT: VISAKHAPATNAM

PRESENT: SRI K. VEERAPU NAIDU, B.Sc. B.L.
Chairman, Industrial Tribunal & Presiding
Officer, Labour Court, Visakhapatnam.

I.T.I.D. (C)29/2002

Dt. 21st day of February, 2002

Ref. No. L-14012/48/2001-JR (DU) dt. 4/1/2002

Between :

P.C.C Gupta, S/o P. Ravindhranath

D. NO. 39/29, 43, Bheemnagar

Mallipalam Post, Visakhapatnam-18. ..Workman

And

The Director,

Naval Science & Technological

Laboratory DRDO Govt. of India,

Vigyan, Nagar, Visakhapatnam.

..Management

This dispute is coming for hearing. Notice served on workman returned unserved with postal endorsement. Addressee deceased. Management called absent. On perusing the material papers on record the court passed the following

AWARD

Workman is deceased. Management called absent. No. L.Rs. have made any representation to come on record.

Hence the reference is closed.

Nil Award is passed.

Given under my hand and seal of the court this the 21st day of February, 2002.

SRI K. VEERAPU NAIDU, Presiding Officer

नई दिल्ली, 5 अप्रैल, 2002

का.आ. 1440.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नवल सांस एण्ड टेक्नोलॉजी लेबोरेट्री के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, विशाखापत्तनम के पंचाट को प्रकाशित करती है, जो केन्द्रीय सरकार को 5-4-2002 को प्राप्त हुआ था।

[सं. एल-14012/42/2001-आई आर-(डी.यू.)]

कुलदीप राय वर्मा, डैस्क अधिकारी

New Delhi, the 5th April, 2002

S.O. 1440.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award of the Industrial Tribunal/Labour Court Visakhapatnam as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of Novel Sciences & Technology Laboratory and their workmen, which was received by the Central Government on 5-4-2002.

[No. L-14012/42/2001-JR(DU)]

KULDIP RAI VERMA, Desk Officer

ANNEXURE

IN THE COURT OF INDUSTRIAL TRIBUNAL CUM
LABOUR COURT : VISAKHAPATNAM

PRESENT SRI K VEERAPU NAIDU, B Sc, B L
Chairman, Industrial Tribunal & Presiding
Officer, Labour Court, Visakhapatnam

ITID (C) 28/2002

Dt 21st day of February, 2002

Ref No L -14012/42/2001-IR (DU) dt. 01/01/2002

Between

P Samuel, S/o Daniel

D NO 58-2635,

Gandhinagar, Butchurajupalem,

Visakhapatnam-27

Workman

And

The Director,

Naval Science & Technological

Laboratory DRDO Govt of India,

Vigyan, Nagar, Visakhapatnam 27 Management

This dispute coming on for hearing Both parties called absent On perusing the material papers on record the court passed the following

AWARD

Both parties called absent Since both parties failed to represent their cases inspite of the notices served on them

Hence under the circumstances

Nil Award is passed

Accordingly the reference is answered

Given under my hand and seal of the court this the 21st day of February, 2002

SRI K VEERAPU NAIDU, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1441.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत पेट्रोलियम कॉ. लि., रांची के प्रबंधन के संबंध में नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण I, धनबाद के पंचाट (संदर्भ संख्या 66/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-3-2002 को प्राप्त हुआ था।

[सं. एल-30012/8/96-आई. आर.-(सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 3rd April, 2002

S.O. 1441.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref No 66/97) of the Central Government Industrial Tribunal I, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of PPC Ltd Ranchu and their workmen, which was received by the Central Government on 28-3-2002

[No L-30012/8/96-IR(C-1)]

S S GUPTA Under Secy

ANNEXURE

BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL NO. I, DHANBAD

(In the matter of a reference under Sec 10(1)(d) 2(A) of the Industrial Disputes Act 1947

Reference No. 66 of 1997.

Parties Employers in relation to the management of
M/s Bharat Petroleum Corporation Ltd . Ranchu

AND

Their Workmen

Present Shri S H Kazmi,
Presiding Officer

Appearances:

For the Employers Shri N K Roy Advocate

For the Workmen None

State Jharkhand Industry Petroleum

Dated, the 21st March, 2002

AWARD

By Order No L-30012/8/96-IR(C-1) dated 7-3-1997 the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act 1947 referred the following dispute for adjudication to this Tribunal

“Whether the action of the management of Bharat Petroleum Corp Ltd Ranchu in terminating the service of Sh Bablu Charan Dhoi on the ground of habitual absence is proper and justified ? If not, to what relief is the concerned workman is entitled ?”

2 It appears from the record that right from the year 1997 no one is taking any step from the side of the workman and this case is pending for the purpose of filing rejoinder as well as documents on behalf of the workman Adjournments after Adjournments seem to have been granted just in order to enable the workman to come forward and to take necessary step It further appears that on 23-2-2001 it was brought to the notice from the side of the management that the concerned workmen is dead, so after taking notice of the said fact and also taking into account past developments on the said date the time by way of last chance was granted to the workman or to any of his heir or his representative who has been taking any step, on his behalf, to appear and take necessary step, otherwise it was made clear that in case of no step on the next date ‘no dispute’ award would be passed Therefore notice was issued to the parties accordingly Despite the said development on 7-3-2002 also none appeared on behalf of the workman and the position remained the same as it was existing earlier As such it is evident that it is needless to keep this case pending any further as the workman concerned does or any one on his behalf do not seem to be interested in pursuing the matter

3 Under such circumstances I render a ‘No Dispute Award in the present case

S H KAZMI Presiding Officer

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1442.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण I, धनबाद के पंचाट (संदर्भ संख्या 113/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-3-02 को प्राप्त हुआ था।

[सं. एल-20012/256/96-आई. आर. (सी-1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 3rd April, 2002

S.O. 1442.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 173/97) of the Central Government Industrial Tribunal/Labour Court I, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management BCCL and their workmen, which was received by the Central Government on 28-03-2002.

[No. L-20012/256/96-IR(C-I)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, DHANBAD

In the matter of reference under sec. 10(1)(d)(2A) of the Industrial Disputes Act, 1947.

Reference No. 173 of 1997

PARTIES : Employers in relation to the management of Amlabad Project of M/S. BCCL.

AND

Their Workmen.

PRESENT : Shri S. H. Kazmi,
Presiding Officer.

APPEARANCES :

For the Employers : Shri H. Nath, Advocate.

For the Workmen : None.

State : Jharkhand. Industry : Coal.

Dated, the 21st March, 2002.

AWARD

By Order No. L-20012(256)/96-IR(C-I) dated 13-10-1997 the Central Government in the Ministry of Labour, has, in exercise of the powers conferred by clauses (d) of sub-Section (1) and sub-sec. (2A) of Section 10 of the Industrial Disputes Act, 1947 reference the following dispute for adjudication to this Tribunal :

“Whether the demand of the Union for the regularisation of Shri Sharda Rajwar as Haulage Operator by the management of Amlabad Project

of M/s. BCCL is legal and Justified ? If so, to what relief is the workman entitled ?

2. During the long pendency of this reference before this Tribunal for about more than four years neither any one appeared on behalf of the concerned workman at any point of time nor the written statement was ever filed. Ultimately the case was fixed for ex-parte hearing. However, from the terms of reference as also from the application filed before the A.L.C. (C). Dhanbad by the Secretary of the sponsoring union raising the dispute on behalf of the concerned workman (Ext. M-1). it appears that the demand has been made for regularisation of the concerned workman as Haulage operator by the management of Amlabad Project of M/s. BCCL as he is claiming to have been doing various jobs which come under time-rated since 3-6-1992 and mostly he has been engaged as helper of Haulage Operator.

3. The management, on the other hand, has come out with the case as has been disclosed in its written statement that the concerned workman was appointed as temporary loader/minor w.e.f. 2-2-1988. It has been said that the concerned workman fell ill and was admitted in the Central Hospital, Dhanbad for his ailment on 8-1-1992. Due to his such ailment, further it has been said, he requested for some alternative job on the surface and accordingly the management agreed to allow time-rated job to him for the period of one month only w.e.f. 3-6-1992. Thereafter on his further request the same was extended for another one month during November, 92. Further the case is that since the concerned workman never worked in time-rated job continuously for atleast one year he is not entitled to the regularisation in time-rated job at all and the action of the management in denying time-rated job is fully justified and the concerned workman as such is not entitled to any relief whatsoever.

4. In support of its case besides filing certain documents which were marked as Ext. M-1 to M-6, one witness has also been examined on behalf of the management.

The said witness (MW-1) is an officer of the concerned colliery and has stated in course of his evidence that the concerned workman, Sharda Rajwar earlier used to work as miner/loader in the concerned colliery. According to him, he was being engaged purely on temporary basis as time-rated workman as he being the miner/loader had sustained some injury and was not attending his duty. He has further said that earlier the concerned workman was engaged for a period of one month only and thereafter upon the request made by the concerned workman his period of engagement was further extended for one month. According to him, the concerned workman can not be regularised as Haulage Operator as he is a piece-rated workman and for appointment of Haulage Operator prescribed procedures are there to be observed, such as, existence of vacancy, D.P.C. and trade test for competence. Further according to him, presently the concerned workman is working as Skip Chute Operator in time-rated Category-III, the same category within which Haulage Operator comes. He has said that the claim of the concerned workman for being regularised as Haulage Operator right from 3-6-1992 is not justified. In course of his evidence, it

appears that, he has proved certain documents filed on behalf of the management, such as, letter of the union sent to A.L.C. (C), marked Ext M-1, letter sent to the A.L.C. (C) by the General Manager of the concerned workman, marked Ext M-2, Office Order dated 22-5-1989 by Dy C.M.E. relating to regularisation of the concerned workman as permanent miner/loader, marked Ext M-3, three letters of the concerned workman whereby he requested the management for light duty, marked Exts M-4 to M-4/2, three letters sent by the Superintendent of Mines by which light duty was assigned to the concerned workman, marked Exts M-5 to M-5/2 and Office Order dated 12-3-1999 under the signature of Dy C.M.E. by which the concerned workman was designated as Skip Chute Operator in time-rated Category-III, marked Ext M-6. Lastly this witness has said that the concerned workman is still continuing in the same capacity i.e. Skip Chute Operator in time-rated Cat III.

It is thus obvious that the aforesaid witness has clearly supported the stand taken by the management and there does not appear to be any reason as to why he should be disbelieved. The aforesaid documents as filed further corroborate the management's stand as it is evident from those documents that earlier the concerned workman was working as miner/loader but on the ground of his ailment when he requested for alternative job then purely on temporary basis he was engaged as time-rated worker, initially for one month and thereafter the same was extended for another one month. It is thus clear that as a time-rated worker at the highest he can be taken to have worked for two months only. One interesting aspect is further required to be taken note of and that is to the effect that though the terms of reference speak about the regularisation as Haulage Operator but in the letter or application sent to the A.L.C. (C) by which the dispute was raised (Ext M-1) The sponsoring union has mentioned about the workman concerned that mostly he has been engaged as helper of Haulage Operator. There is much difference between the helper of Haulage Operator and Haulage Operator. Anyway, from Ext M-6 which is an Office Order it is evident that the concerned workman has already been designated as Skip Chute Operator in time-rated Category-III and he is still continuing in the same capacity as per the statement of the aforesaid witness. May be it is for this reason the concerned workman or the union which has raised the dispute on his behalf has left taking any interest in this case and stopped pursuing this reference right from the inception.

5 Thus, in view of all the aforesaid materials produced from the side of the management it becomes apparent that the claim of the workman concerned for being regularised as Haulage Operator right from 3-6-1992 is not justified.

6 The award is thus rendered as hereunder

The demand of the union for regularisation of Sharda Rajwar as Haulage Operator by the management of Amlabad Project of M/S. B.C.C. Ltd. is not justified and he is not entitled to any relief whatsoever.

However, there would be no order as to cost.

S.H. KAZMI, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1443—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 84/93) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-4-2002 को प्राप्त हुआ था।

[सं. एल-20012/310/92-आई आर (सी-1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 3rd April, 2002

S.O. 1443.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.84/93) of the Central Government Industrial Tribunal No 2 Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management BCCL and their workmen, which was received by the Central Government on 28-03-2002.

[No L-20012/310/92-IR(C-1)]

S. S. GUPTA, Under Secy

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, AT DHANBAD

PRESENT :

Shri B. Biswas, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act, 1947

Reference No. 48 of 1993

PARTIES Employers in relation to the management of Moonidih Project of M/S. BCCL and their workman

APPEARANCES :

On behalf of the workman Shri S. C. Gaur, Advocate

On behalf of the employers Shri H. Nath, Advocate

State Jharkhand Industry Coal

Dated, Dhanbad, the 11th March, 2002

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No L-20012(310)/92-I.R. (Coal-I), dated, the 8th July, 1993

SCHEDULE

Whether the action of the management of Moonidih Project under Moonidih Area of M/s. B.C.C.L. P.O.

Moonidih, Dist. Dhanbad in dismissing Shri Ratan Bauri from service is justified? If not, to what relief the workman is entitled?"

Bauri from the service is justified? If not, to what relief the workman is entitled?"

DECISION WITH REASONS

2. The case of the concerned workman according to his W.S. in brief is as follows :—

The concerned workman in his W.S. submitted that he was an old employee who worked under the management for more than 15 years with unblemished record of service. He submitted that he could not attend his place of work due to his illness and for which from time to time he reported the matter to the management illegally, arbitrarily and without accepting his leave application issued a chargesheet against him and thereafter held a departmental enquiry through an Enquiry Officer appointed by the management. He alleged that the E.O. without holding an enquiry properly found him guilty, submitted his report and on the basis of that report the disciplinary authority dismissed him from service with effect from 24-2-92. He submitted that the order of dismissal was illegal, arbitrary and against the principles of natural justice. He submitted that though he committed misconduct for not joining his service due to his illness his order of dismissal has to be considered as an extreme penalty and for which he prayed for reconsideration of his order of dismissal before the disciplinary authority but the disciplinary authority as did not consider necessary to recall the order of dismissal he raised an industrial dispute before the ALC(C), Dhanbad for conciliation which ultimately resulted reference to this Tribunal.

3. The management on the contrary after filing W.S.-cum-rejoinder have denied all the claims and allegation which the concerned workman asserted in his W.S. The management submitted that the concerned workman remained himself absent from duty with effect from 11-3-91 without information or prior permission. Accordingly a chargesheet was issued to him with direction to submit his explanation for his habitual absence which constituted misconduct under clause 17(i) 26-1-1 of the Certified S.O. The management further submitted that the concerned workman was in the habit of remaining himself absent and during the year 1989 he remained absent from 115 days and during the year 1990 he remained himself absent for 167 days. The management submitted that the concerned workman participated in the enquiry proceeding fully and the E.O. after holding enquiry as found himself guilty, submitted his report to that effect before the disciplinary authority. The management further submitted that the chargesheeted workman did not produce any witness or paper to prove during the course of enquiry proceeding that he had sent information about his sickness to his departmental head. Accordingly the management submitted that the order passed by the disciplinary authority was found legal and proper and it did not violate the principle of natural justice and for which the concerned workman is not entitled to get any relief which he has prayed for.

4. The points for consideration in this reference are :—

"Whether the action of the management of Moonidih Project under Moonidih Area of M/s. B.C.C.L P.O. Moonidih, Distt. Dhanbad in dismissing Shri Ratan

5. It is seen that the concerned workman has examined two witnesses in support of his claim while the management examined one witness i.e. The E.O. relating to the allegation brought against the concerned workman. It is seen from the record that previous to hearing of the instant case on merit preliminary hearing relating to the fairness and propriety of the domestic enquiry was taken up and vide order No. 58 dt. 31-1-2002 it was observed that the domestic enquiry held against the concerned workman was fair and proper and also in accordance with the principles of natural justice. Naturally at this stage I do not find any sufficient ground to consider again if the enquiry proceeding done by the E.O. was fair, proper and in accordance with the principles of natural justice or not. Only the point for consideration is whether the charge framed against the concerned workman was legal and valid and if so whether the punishment of dismissal inflicted upon the concerned workman was in accordance with the principles of natural justice. It is the specific allegation of the management that the concerned workman started absent himself from duty with effect from 11-3-91 and accordingly the management issued a chargesheet to the concerned workman with direction to show cause within 3 days on the ground of committing misconduct under clause 17(i) para 26.1.1 of the Certified S.O. It is the contention of the management further that thereafter the enquiry proceeding under order of the management was drawn up against the concerned workman by the E.O. and the said enquiry proceeding was conducted by the E.O. in presence of the concerned workman and after enquiry as the E.O. found the concerned workman guilty of misconduct for violation of clause 17.1 para 26.1.1 of the Certified S.O. he submitted his report before the disciplinary authority and the disciplinary authority considering the report of the E.O. issued order of dismissal against the concerned workman with effect from 24-2-92. On the contrary it is the contention of the concerned workman that he could not attend the place of duty on the ground of his illness and to that effect from time to time he intimated to the management. But the management did not inform him if his leave was sanctioned or not. From the evidence of the concerned workman it transpires that he remained himself absent from duty for the period of 3 months on the ground of his sickness but in course of hearing the concerned workman has failed to produce any medical paper to show that actually he could not attend his duty on the ground of his illness, though sufficient opportunities were with him to produce necessary papers before the E.O. at the time of enquiry proceeding. Even he had the scope to submit necessary medical papers at the time of preliminary hearing. But inspite of getting opportunity the concerned workman did not consider necessary to avail of the same. Clause 26.1.1 speaks clearly that habitual late attendance or willful or habitual absence without sufficient cause amounts to an act of misconduct. It has been contended by the management that the concerned workman in the year 1989 remained himself absent for 115 days while in the year 1990 he remained himself absent for 167 days. But in course of hearing the management did not consider necessary to

establish that allegation against the concerned workman. MW-1 i.e. the E.O. also in course of his evidence admitted that the management did not produce any cogent paper to show that the concerned workman was a habitual absentee during the year 1989 and 1990. In course of hearing the management also has failed to produce any such cogent paper in support of their claim that the concerned workman remained himself absent for 115 days during 1989 and 167 days during the year 1990. Accordingly there is little scope to say that the concerned workman was a habitual absentee from duty without sufficient cause during the period of in question. But is clear particularly when the concerned workman admitted in course of his evidence that he did not attend his place of work with effect from 11-3-91 continuously for more than 10 days without any sanctioned leave. As the concerned workman has failed to establish that he intimated the reason of his absence to the management I at this stage do not find any scope to accept his plea. Therefore, considering all aspects carefully I find reason to believe that the concerned workman remained himself absent from duty for the period of three months since 11-3-91 without intimation to the management. Accordingly there is sufficient scope to say that the charge framed against the concerned workman finds substantial footing.

6. Now the point for consideration is if the order of dismissal passed by the disciplinary authority was according to the principles of natural justice. It is seen that the concerned workman remained absent for three months. It is fact that inspite of his absence the concerned workman had failed to produce any cogent paper though he took the plea that as he was lying ill he could not attend his place of work. It is seen that the fault committed by the concerned workman amounts to misconduct but it is equally to be looked into whether for three month's absence a person should be dismissed from his service. The order of dismissal has to be considered as the economic death of a workman. Accordingly before inflicting such punishment it is also equally to be looked into the gravity of the offence committed by him. The management has failed to establish that the concerned workman was a habitual absentee. Therefore, there is no scope to consider that aspect in the matter of inflicting punishment upon him by the management. It is true that the management suffered for the absence of the concerned workman as they did not get his service during this period. But the management also did not disclose actual extent of loss which they sustained for not getting service of the concerned workman during the period of his absence. I consider that the order of dismissal passed against the concerned workman for his absence for a period of three months appears to be too harsh and rigid. There was scope on the part of the management to inflict other punishment instead of passing the order of dismissal which has to be considered as economic death of a workman. If that aspect is considered in that case there is scope to say that the management has violated the principles of natural justice by passing the said order in question. Accordingly after careful consideration of all the facts and circumstances I hold that an opportunity may be given to the concerned workman for his rectification in a life so that he can discharge his duties diligently and sincerely henceforth. Therefore, instead of inflicting such serious punishment I consider an

opportunity may be given to him in view of my discussions above. Accordingly I hold that the order of dismissal passed by the Management is liable to be set aside. In the result, the following Award is rendered :—

“The action of the management of Moonidih Project under Moonidih Arca of M/s. B.C.C.L. P.O. Moonidih, Distt. Dhanbad : dismissing Shri Ratan Bouri from the services is not justified. Consequently, the concerned workman is entitled to the reinstatement in his service with effect from the date of his dismissal but without any back wages. However, he will be entitled to the continuity of his service as the absence during the period in question shall be treated as leave without pay.”

The management is directed to implement the Award within three months from the date of his dismissal to the date of his reinstatement.

B. BISWAS, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1444.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 22/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-3-02 को प्राप्त हुआ था।

[सं. एल-20012/423/2000-आई आर (सी-1)].

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 3rd April, 2002

S.O. 1444.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.22/2001) of the Central Government Industrial Tribunal/II, Dhanbad now as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of BCCL and their workmen, which was received by the Central Government on 28-03-2002.

[No. L-20012/423/2000-IR(C-I)]

S. S GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO. 2), DHANBAD

PRESENT

Shri B Biswas, Presiding Officer

In the matter of an Industrial Dispute under section 10(1)(d) of the I.D. Act, 1947

Reference No. 22 of 2001

PARTIES : Employers in relation to the management of M/s. BCCL and their workman.

APPEARANCES :

On behalf of the workman : Shri S.C. Gaur, Advocate.

On behalf of the employers : None.

State : Jharkhand. Industry : Coal.

Dated, Dhanbad, the 12th March, 2002.

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/423/2000 (C-I), dtd the 25th January, 2001.

SCHEDULE

"Whether the action of the management of M/s. BCCL in changing the seniority position of Sri Bal Kishore Panday, Store Keeper Grade-I of West Jharia Area Regional Stores, Moonidih from serial No. 1 of 1986 list of serial No. 4 in the seniority list dated 28-9-1999 is justified and legal? If not, to what relief is the workman entitled?"

2. In this reference Shri S.C. Gaur, Advocate appeared on behalf of the workman but none appeared on behalf of the management. During the course of hearing, Shri S.C. Gaur, learned Advocate for the workman by filing a petition submitted that the concerned workman is not interested to proceed with the instant case. In view of the facts and circumstances I consider there is no reason to issue any notice to the management in the matter of taking up hearing of this reference. There is reason to believe considering the submission of the learned advocate for the workman that no dispute is existing between the parties. Accordingly, a 'No dispute' Award is rendered and the reference is disposed of on the basis of the 'No dispute' Award presuming non-existence of any industrial dispute between the parties presently.

B BISWAS, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1445—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार टिस्को के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 114/96) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-3-2002 को प्राप्त हुआ था।

[सं. एल-20012/491/95-आई आर (सी-1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 3rd April, 2002

S.O. 1445.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No.114/96) of the Central Government Industrial Tribunal-II, Dhanbad now as shown in the Annexure, in the Industrial

Dispute between the employers in relation to the management of TISCO and their workmen, which was received by the Central Government on 28-03-2002.

[No. L-20012/491/95-IR(C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE**BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, AT DHANBAD****PRESENT**

Shri B. Biswas,
Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act., 1947

Reference No. 114 of 1996

PARTIES : Employers in relation to the management of Tisco. and their workman.

APPEARANCES :

On behalf of the workman : None.

On behalf of the employers : Shri D.K. Verma,
Advocate.

State : Jharkhand. Industry : Coal.

Dated, Dhanbad, the 14th March, 2002.

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/491/95-I.R. (Coal-I), dated, the 31st October, 1996.

SCHEDULE

"Whether the action of the management of Jamadoba Colliery of M/s. TISCO in denying to provide employment to the dependent wife of late Keshri Prasad Tiwari is justified? If not, to what relief is the concerned workman entitled?"

The case of the concerned workman as per W.S. in brief is as follows :—

2. The concerned workman in the W.S. submitted that her husband Keshri Pd. Tiwari was a permanent employee under the management. He entered into his service on 2-1-78 and died on 23-1-92 while he was in service. She submitted that she being the widow of the deceased submitted a representation before the management for her employment as her husband died in harness. In this connection she has referred to the provision of NCWA relating to the employment of the dependant of the deceased if the deceased dies in harness. She alleged that inspite of specific provision as per NCWA the management not only ignored her representation but also refused to give her any employment. Accordingly, finding no other alternative way she raised an industrial dispute before the ALC(C), Dhanbad for conciliation which

ultimately resulted reference to this Tribunal for adjudication.

3. The management on the contrary after filing W.S.-cum-rejoinder have denied all the claims and allegation which the concerned workman asserted in her W.S. The management submitted that as they have their own agreement for providing employment to the dependants of the deceased employees they do not follow the provision as laid down in NCWA. They follow their own procedure in view of the Joint agreement entered into between the different unions. It has been submitted that NCWA-IV which remained effect from 1-1-87 to 30-6-91 wherein it was specifically mentioned there under clause 9.43 that "in regard to employment of dependants of employees TISCO will follow their existing practice." Similarly as per NCWA V under clause 9.5.0 there has been specific citation with regard to employment of dependants as follows :—

"In case of TISCO the matter would be settled at by bipartite level."

The management submitted that they follow a practice of getting two dependants of an employee enrolled in the employees dependant register after completion of 15 years of service of that employee for their future employment against future vacancies. The employment used to be considered according to the seniority of the employee to fill up vacancies available in different collieries of the company. They further submitted that the dependants used to be considered for enrolment were brothers, sons, and son-in-laws. No female relation of an employee used to be enrolled as a dependant for future employment. They submitted further that as they own only underground coalmines female workers are not permitted to be engaged in any underground mine. Accordingly there is practically no scope for providing female relation of an employee. As such they are not considered for their employment as dependant of their employees. The management further submitted that as per procedure the concerned workman Keshri Prasad Tiwari was not entitled to get his dependant enrolled as he had not completed minimum 15 years of service. He was appointed on 2-1-78 and died on 23-1-92 and his total number of service was 14 years only. Accordingly he did not have any occasion to get his dependant enrolled in the Company's dependant register for future consideration for employment against future vacancies. The name of the deceased could not be enrolled as his dependant as per Company's procedure followed in the past and accordingly there was no scope for consideration of her employment as dependant of the deceased. Accordingly the management submitted that the concerned workman is not entitled to get any relief which she has prayed for.

4. The points for consideration in this reference are :—

"Whether the action of the management of Jamadoba Colliery of M/s. TISCO, in denying to provide employment to the dependant wife of late Keshri Prasad Tiwari is justified? If not, to what relief is the concerned workman entitled?"

DECISION WITH REASONS

5. The management in order to substantiate their

claim examined one witness while the concerned workman did not examine any witness in order to substantiate her claim. It is admitted fact that Keshri Prasad Tiwari was an employee under the management. It is clear from the submission of the management as well as from the submission of the concerned workman that the said Keshri Prasad Tiwari entered into the service under the management on 2-1-78 and he died on 23-1-92 i.e. after completing his 14 years of service. It is the contention of the concerned workman that as per provision of NCWA the management cannot avoid their liability to provide her employment being the dependant widow of her deceased husband. She disclosed that inspite of existing provision of law the management has refused to provide her with any employment. On the contrary the management submitted that they follow a separate procedure in the matter of consideration of employment of employees dependants and that has duly been incorporated in NCWA-IV and V. They further submitted that the said procedure was adopted on the basis of Bipartite agreement entered into between the management and different union. I have considered the NCWA-IV and V and in clause 9.4.3. of NCWA-IV there is specific citation to the effect that TISCO will follow their existing practice in regard to employment of their employees while in clause 9.5.0 of NCWA-V it has been cited clearly that in case of employment of dependants TISCO should settle the same at bipartite level. Therefore, that referring these two provisions the management categorically submitted that they are not liable to follow the procedure of NCWA relating to employment of the employees dependants in case of death or retirement. The management further submitted that according to the procedure adopted as per the said settlement an employee after completing 15 years of service is entitled to enroll his two dependants in the dependants enrolment register maintained by the management for their future employment. The employment of the employees dependants are considered according to the seniority. The management further submitted that as per settlement entered into between the management and the union dt. 16-3-94 Ext. M-6 it was observed clearly that scope for employment of female workers in the Mining Industry is very limited. They are not in a position to give employment to any female dependant. Apart from this fact the management submitted that as per the procedure adopted Keshri Prasad Tiwari i.e. deceased did not get any scope to enrol the names of his two dependants in the enrolment register of the company as he died before completion of that period. They submitted that the concerned workman died after completing his service for 14 years and for which according to the procedure followed by the management they did not get any scope to consider employment of the widow of the deceased. MW-1 in course of his evidence has fully corroborated this fact which the management asserted in the W.S. in the matter of employment of the employees dependants in case of death or retirement. It is fact that the concerned workman submitted representation before the management for have employment but the management vide their letter marked as Ext. M-3, M-3/1 and M-4 assigned the reasons under which circumstances they were unable to provide employment to the concerned workman.

6. I have considered all aspects carefully. It is seen that the policy adopted by the management is based on bipartite agreement entered into between them and the different unions. It is further seen that such policy which

the management adopted has clearly been cited in NCWA-IV and V. It is really shocking that Keshri Prasad Tewary died only completing his 14 years of service. He died leaving behind his widow, three minor daughters and one minor son. It is seen that as per existing policy, the management could not consider the claim of the concerned workman for her employment. I have considered all the matters carefully and I hold that inability expressed by the management to provide employment to the concerned workman which is based on just and proper ground. There is reason to believe that if the case of this considered workman is considered others also may follow suit and in such circumstances the policy which was formulated on the basis of joint agreement between the management and the unions will be frustrated totally. Accordingly I hold that the management did not commit any illegality or violated the principles of natural justice in denying employment to her in place of her deceased husband on compassionate ground. In the result the following Award is rendered —

"The action of the management of Jamadoba Colliery of M/s TISCO in denying to provide employment to the dependant wife of late Keshri Prasad Tewary is justified. Consequently the concerned workman is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली 3 अप्रैल, 2002

का.आ. 1446—आद्योगिक विवाद अधिनियम 1947 (1947 का 14) की धारा 17 के अनुसरण में केंद्रीय सरकार की सी.सी.एल. के प्रबंधन के संबंध में निम्नलिखित आद्योगिक विवाद में केंद्रीय सरकार आद्योगिक अधिकरण। धनबाद के पचाट (मदभं सख्या 188/94) को प्रकाशित करती है, जो केंद्रीय सरकार को 28-03-2002 को प्राप्त हुआ था।

[स. एल. 20012/7/94-आई.आर. (सी-1)]

एस.एस. गुप्ता, अवसर सचिव

New Delhi the 3rd April 2002

S.O. 1446. In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref. No 188/94) of the Central Government Industrial Tribunal, Dhanbad I now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of B.C.C.L. and their workmen which was received by the Central Government on 28-03-2002.

[N.S. L-20012/7/94-IR(C-1)]

S. S. GUPTA Under Secy

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. I, AT DHANBAD

In the matter of a reference under Sec. 10(1) (d) (2A) of the Industrial Disputes Act 1947

Reference No. 188 of 1994

Parties Employers in relation to the management of Ramkanali Colliery of M/s B.C.C.L. Ltd

AND

Their workman

Present : Shri S. H. Kazmi
Presiding Officer

Appearances :

For the Employers Shri D. K. Verma
Advocate

For the Workmen Shri S. N. Goswami
Advocate

State Jharkhand Industry Coal

Dated, the 19th March 2002

AWARD

By Order No. L-20012/7/94-I R. (Coal-I) dated the 25th July 1994 the Central Government in the Ministry of Labour has in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act 1947 referred the following dispute for adjudication to this Tribunal

Whether the action of the management of Ramkanali Colliery under Katras Area No. IV of B.C.C.L. in dismissing Sri Hanif Mian Dumper Khalasi w.c. 13/1-8-92 is justified? If not to what relief the concerned workman is entitled?"

2. Precisely the case of the sponsoring union is that the concerned workman Hanif Mian was a permanent employee of Ramkanali Colliery under Katras Area No. IV of M/s B.C.C.L. working as Dumper Khalasi and during the long tenure of his service at no point of time any chargesheet or warning letter was issued against him. It has been said that one F.I.R. was lodged by the management through one Dhami Ram Nayak of CISF Ramkanali colliery on 8-9-1991 against the concerned workman under Sec. 379 and 411 IPC which was registered Katras P.S. Case No. 303/91 and during the pendency of investigation of the said case a chargesheet under para 26(1) of the Certified Standing Orders of the Company was issued against the concerned workman on the same and identical set of charges as levelled in the said criminal case. The said chargesheet was issued by the Dy. C.M.E. Ramkanali Colliery and the concerned workman was asked to show-cause as to why action should not be taken against him pursuant to which the reply was furnished by the concerned workman. Further the case is that as a matter of fact the concerned workman was on duty in second shift on 8-9-91 at about 7 to 8 P.M. in transporting section of concerned colliery where Chote Ramjan Mian Transporting Munshi directed him to fill up diesel in few pay loaders, tares and shovel standing near the transporting office and in accordance with the said direction he filled up diesel 100 litres, 80 litres and 60 litres respectively in those vehicles and excess diesel of about 5 litres was to be filled up into the shovel standing near transporting office and taking about 5 litres diesel in a bucket to fill up the tank of the standing shovel. While he was going towards transporting office near the gate within the colliery premises and to report to Transporting Munshi at that time he was forcibly caught by the CISF personnel

without any hearing of the concerned workman of the real fact and they charged him for theft of diesel. Further it has been said that during the pendency of the aforesaid criminal case domestic enquiry was conducted which was mere an eye wash. Both the Enquiry Officer as well as Presenting Officer were the officers of the same colliery appointed by the Dy. C.M.E. who was also not competent to issue any chargesheet against the concerned workman. It is said that the said enquiry was conducted not fairly and properly and the concerned workman was not provided reasonable opportunity to defend his case. Further it is said that when domestic enquiry concluded, the report was submitted and on the basis of the said report the concerned workman was dismissed from service vide order dated 3/4-8-92. Further it has been said that on perusal of the records of the enquiry proceeding it is apparent that there are contradiction in the statements of the witnesses and there is no evidence worth-mentioning against the concerned workman in regard to the misconduct alleged against him for theft or fraud. As such, the report of the Enquiry Officer is perverse and liable to be vitiated. It has also been said that the concerned workman is an illiterate person and the Enquiry Officer did not read over the statements of the witnesses, rather prepared the statements of the witnesses behind the back and obtained signature of the concerned workman under pressure. It is also the case that the punishment awarded is shockingly dis-proportionate to the misconduct as alleged for which criminal case on the same set of allegation grounded and the same could not be established and subsequently final report was filed.

3. The management on the other hand, has come out with the case that the story set up by the concerned workman is a cock and bull story and is not based on facts and the same has been put forward only to legitimise a criminal act on his part. It has been said that the enquiry against the concerned workman was properly conducted giving the concerned workman full opportunity to present his case and to defend himself and he was dismissed only after he was found guilty of serious misconduct. It has also been said that the management's office had an open mind and was never prejudiced against the workman concerned and the chargesheet was issued to him by a competent authority under the provision of the Standing Orders subsequent to which enquiry was also conducted properly and fairly. In view of the facts mentioned above further it has been said that the dismissal of the concerned workman is fully justified and he does not deserve any relief.

4. Before proceeding ahead it is significant to mention that during the pendency of the present reference upon the preliminary issue as raised the domestic enquiry has already been held to be fair and proper.

5. From Ext. M-6 which is enquiry report with order of dismissal approved by the competent authority it appears that the main ground taken for dismissal or for recommending the inflicting of the said punishment is the conflicting statement made by the concerned workman at different stages of the proceedings. It stands mentioned in the enquiry report that during the preliminary enquiry the concerned workman made the statement (Ext. M-15 marked in course of the enquiry) that upon the instruction or direction of the Transporting Munshi he filled up the

diesel in different vehicles and as regards the left over diesel he was instructed to take out from drum and put the same in a bucket for the purpose of filling up a pay loader. After taking out the said diesel when he was going towards transport attendance room with the bucket for keeping the same there he was being caught by a C.I.S.F. constable outside the gate and was taken to CISF camp by him. There, according to him, he was assaulted despite the explanation given by him. He has also said that at that time CISF personnel also caught hold of one Bira Das his co-worker and he was also being thrashed badly on the alleged charge of theft. In course of the present domestic enquiry however according to the finding in the enquiry report the concerned workman came out with another version during the recording of his statement before the Enquiry Officer and he stated that at the time of filling of the vehicles with diesel by him as it started raining he kept the left over diesel of about 10 litres in the transporting office, contained in a bucket and as he was fully drenched he went to his nearby official residence to change his clothes and immediately returned back and thereafter taking the bucket from the office, according to him, when he proceeded ahead to meet Ramjan Mian, Munshi and to ask as to what to do with the left over diesel, in the meantime CISF personnel caught hold of him and despite the explanation furnished by him they took him to barrack, assaulted and then handed over him to the Incharge, O.P. Such contradictory statements, according to the Enquiry Officer, are indicative of theft committed by the concerned workman. Though he has referred some other materials also while coming to the conclusion but it is obvious from the report that the aforesaid ground was the main ground which weighed with him while arriving to the finding of guilt.

6. Considering the materials available on record as also in view of the circumstances involved it has got to be considered as to how far the conclusion arrived at by the concerned authority was correct and also whether the said conclusion or the findings are based on sound reasoning or suffers from perversity.

7. During the enquiry proceeding it appears that three witnesses were examined from the side of the management. Out of them he was Ashok Kumar, management's representative in the said enquiry and also an officer of the same colliery who had conducted the preliminary enquiry also in the present matter. He appears to have said that on the alleged date sometime in the night he was informed on telephone that the concerned workman has been caught by CISF personnel while committing theft of diesel. He has accepted that despite getting such information he had not visited the spot the same night, rather had gone there next day in the morning. He has not claimed to have witnessed the concerned workman committing any theft nor he has said anything about any bad antecedent of the concerned workman. It is evident that he has stated what he was being informed as regards alleged occurrence. The second witness examined was the concerned Transporting Munshi, Chote Ramjan Mian. He has not given any fresh statements rather has stated that his statements are same as given earlier during the preliminary enquiry pursuant to which his statement recorded earlier was marked Exhibit-8. Having gone through his statement as

contained in Exhibit-8 it appears that he has admitted the fact that the concerned workman had filled up different vehicles with diesel as per his instruction but thereafter, according to him, the concerned workman had not sought any further instruction from him with respect to any left over diesel. At through his statement he has not stated about any theft committed by the concerned workman, rather has simply said that he was being informed that the concerned workman was caught by the two CISF personnels while he was taking away diesel kept in a bucket. The third witness on behalf of the management was Hussani Main, Khalasi. He has said that while he was in transporting office he had seen the concerned workman putting diesel in the bucket from the drum and thereafter going out of the office. He has further said that he was being informed by two CISF personnels and they had caught the concerned workman while he was taking away the diesel outside the gate. According to him, they took him to their barrack where he saw the concerned workman and one Bira Das. In his statement he has not attributed anything against the concerned workman from his own side in justification of the charge levelled against him and has not claimed to have witnessed the commission of theft by the concerned workman. He has simply taken the name of those two CISF constables who, according to him, had informed him about the theft committed by the concerned workman of the diesel kept in the bucket.

Significantly two material witnesses, namely, Dhani Ram who lodged the F.I.R. also and S.R. Mishra, two Nayak and Constable of the CISF whose names were taken by all the aforesaid management's witnesses in course of the enquiry were not examined during the enquiry by the management without furnishing any explanation or reasons for the same. As they were the only two persons who had claimed themselves to have witnessed the concerned workman committing theft, their presence during the enquiry proceeding would have material a lot as the rest were just hearsay witnesses or the witnesses merely relying upon those testimony it was difficult to come to a reasonable conclusion that either the concerned workman, in fact, had committed the theft or must have committed the theft. It appears that simply their statements recorded earlier in course of the preliminary enquiry were marked Exhibits 13 and 14 respectively. Even if those statements are to be taken into account there appears to be several contradiction and in-consistency and inference cannot be necessarily gathered out of that, in act, it was a case of commission of theft. They both have stated about the apprehending the concerned workman while he was in the middle of a bridge and they do not say about catching hold of the concerned workman near the gate or outside the gate as has been stated by those witnesses examined during the enquiry.

8. It is not worthy that when the alleged occurrence took place on the same date i.e. on 8-9-1991 two FIR or written reports were submitted before the concerned police station. One was by Dhani Ram, Nayak, CISF and another by Chote Ramjan Mian, the Munshi of the concerned colliery. Both these documents formed part of the enquiry proceeding (Ext. M-5). Dhani Ram in his written report has mentioned that when he was on duty

on the said date then at about 7.30 P.M. he saw Hanif Mian, the concerned workman and Bira Das both the employees of the concerned colliery going away. According to him, the concerned workman was having a bucket in hand in which about 7 liters of diesel was there and Bira Das was having a 'Dabba' in his hand containing about one litre of diesel. Further, according to him, when he intercepted them they could not furnish satisfactory explanation, rather accepted that they were going to sell the same after which they were caught hold of on the charge of commission of theft. But curiously the concerned munshi who had entrusted the work to the concerned workman of filling up the diesel in the vehicle standing over there had something different to say in his FIR or written report submitted before the police. He has stated therein that while he was on his duty during that period he had asked the concerned workman to fill up the diesel in the pay loader and no sooner the concerned workman came out of the gate holding a bucket containing diesel and one mug, some CISF personnels who were in plain dress and were fully drunk intercepted him and snatched away the bucket from him and thereafter they started beating the concerned workman. In the meantime, according to him, when Bira DAS, Dumper Khalasi, reached there after having heard "Halla" he was also being badly thrashed by those CISF personnels who thereafter took them to their camp and made them confined there. He thereafter requested for taking necessary legal action. Quite obviously in his entire written report Ramjan Mian, the munshi did not attribute anything against the concerned workman and he did not level any charge of theft against him, rather he appeared to have grievance against those CISF personnels who, according to them, demonstrated their high handedness. But interestingly when the matter further proceeded and the enquiry was held Ramjan Mian changed his statement and made the statements in different manner. He did not state anything against those CISF personnel as stated by him earlier, though in his subsequent statement also he has not attributed the charge of theft against the concerned workman and simply has projected himself as a hearsay witness. So far as the aforesaid statement made by Dhani Ram in his written report is concerned as per that the concerned workman as well as Bira Das both were caught red handed and were found to have committed theft. Another CISF personnel who was accompanying Dhani Ram has also stated in the same way as it is apparent from his statement recorded in course of preliminary enquiry which was marked the Exhibit 14 during subsequent enquiry. On the basis of the FIR lodged by Dhani Ram case was registered against both of them and investigation was taken up. But curiously and strongly the said Bira Das was not proceeded against in the domestic enquiry and no chargesheet was submitted against him despite the fact that the direct material against both the employees were the same i.e. statement of those two CISF personnels. The management has no explanation much less reasonable explanation for that and to justify as to why the concerned workman only was singled out for serving chargesheet and for initiation of the departmental proceeding.

9. As it has already been mentioned above, when the criminal case was instituted against the concerned workman and one Bira Das than during the pendency of investigation of that case on identical charge disciplinary

proceeding was initiated in which initially the preliminary enquiry was done and thereafter upon the submission of chargesheet only against the concerned workman the domestic enquiry was held. It appears from the certified copy of final report submitted by the police which is part of the record of this case that upon the completion of investigation the charges against both the workman were found to be not established and remained unsubstantiated and so for that reason ultimately final report was submitted by which both the workman were exonerated from those charges and the matter did not proceed any further. It is true that merely on the basis of acquittal in a criminal case one cannot be exonerated in departmental proceeding for the same charge and acquittal in a criminal case does not have any binding effect upon the disciplinary proceeding but even then so far the present case is concerned the aforesaid finding with respect to nature and quality of the materials made available in course of the enquiry proceeding coupled with the outcome of criminal case as stated above can certainly form a basis for extending the relief to the concerned workman as prayed for and I have no hesitation in observing that the charges levelled against the concerned workman as regards the misconduct on his part cannot be said to have been satisfactorily substantiated and no conclusive finding as regards the guilt of the concerned workman can be arrived at on the basis of the materials available on record.

It is true that there are some variance in the statements of the concerned workman made on different occasion but morally on that count it is unjustified to come to an ultimate finding that he had committed theft rather the other factors and aspects born out of the enquiry proceeding are further required to be considered at the same time variance conflict and in consistency in the materials put forward by the management are also required to be taken into consideration and those have been fully dealt with as above. It is well settled principle that the conclusion must be based on sound reasoning and the reasoning should always be supported by the materials produced. The misconduct with respect to theft has not been conclusively and satisfactorily established in the instant case as mentioned above. At the highest the management succeeded in raising suspicion through the materials produced. If the concerned workman was found taking away diesel kept in a bucket within the precinct and premises of the colliery then merely by that it cannot be inferred that he committed theft or was taking away the same for wrongful gain. It is true that the conclusion arrived at by the disciplinary authority should not be lightly entered with but if those conclusions are arrived at without any justifiable basis or the same are not based on sound reasonings keeping in view the materials on record as in the present case, then certainly those findings are open for scrutiny and interference.

10. In view of all the aforesaid considerations and discussions I am of the view that the relief claimed by the concerned workman as regards his reinstatement is justified and he deserves to be reinstated. However, considering the materials on record and circumstances involved the fact remains that the concerned workman, on the date when he was caught allegedly on the charge of theft, had not conducted himself in a manner as is required from duty bound and responsible employee.

Even if he was not having any bad intention, he should not have allowed the suspicion to be raised by not acting promptly and informing the concerned transporting munshi immediately and to seek instruction from him as regards the left over 7-8 litres of diesel kept in a bucket. He proceeded in a lathergic manner, delayed the process and when hauled up with aforesaid accusation he came out with conflicting version in his anxiety to save himself from any charge of misconduct. In such circumstances further, in my view, through the concerned workman deserves reinstatement certainly he does not deserve the back wages.

11. The award is thus rendered as hereunder :

The action of the management of Ram Kanali Colliery under Katras Arca No IV of M/S. B.C.C. Ltd. in dismissing the concerned workman, Hanif Mian, Dumper Khalasi w.e.f. 3/4-8-1992 is not justified. He is directed to be reinstated in the service of the management from the date of his dismissal as mentioned above, within 30 days from the date of publication of the award, but without any back wages.

However, in the circumstance of the case there would be no order as to cost.

S. H. KAZMI, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1447.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबन्धन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 69/1993) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28/3/2002 को प्राप्त हुआ था।

[सं. एल-20012/18/92-आई.आर.(सी-1)]

एम. एस. गुप्ता, अवर सचिव

New Delhi, the 3rd April, 2002

S.O 1447. —In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 69/1993) of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of E.C.L. and their workman, which was received by the Central Government on 28/3/2002

[No. L-20012/18/92-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO II, DHANBAD

PRESENT

SHRI B. BISWAS,
Presiding Officer

In the matter of an Industrial Dispute under Section
10(1)(d) of the I D Act 1947

REFERENCE NO 69 OF 1997

PARTIES : Employers in relation to the
management of Nirsra Area of
M/s E C L s Shvampur Colliery
and their workman

APPEARANCES :

On behalf of the workman None

On behalf of the employers None

State Jharkhand Industry Coal

Dated, Dhanbad 12th March 2002

AWARD

The Govt of India Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I D Act 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No L-20012/18/92-I R (Coal-I) dated the 28th May 1993

SCHEDULE

Whether the demand of the Bihar Colliery Kamgar Union for regularisation of service of S/Shri Sarat Chaudhary and three others by the management of Shampur Colliery of M/s Nirsra Area of E C L is fair just and legal If not to what relief the workmen concerned are entitled ?

2 The case of the concerned workman according to their W S in brief is as follows —

The concerned workman submitted that they worked as Blacksmith at Shvampur Colliery under the management since long with unblemished record of service under their direct control and supervision and they put in more than 240 days attendance in each calendar year during the tenure of their work It has been alleged that though they worked directly under control and supervision of the management they used to receive their wages far below the wages of permanent workers through intermediaries Accordingly they submitted representation before the management several times for regularisation of their services But the management did not pay any heed to their representation Accordingly they raised an industrial dispute before the ALC(C) Dhanbad for conciliation which ultimately resulted reference to this Tribunal

3 The management on the contrary after filing their W S -cum-rejoinder have denied all the claims and allegation which the concerned workmen asserted in their W S The management in their W S categorically denied the fact that the concerned workmen were under regular employment of the management for a long period and in each year they put in 240 days attendance during the period of their work The management also categorically denied the fact that they paid any wages to the concerned workmen through intermediaries which was far below the wages of the permanent workmen The management submitted that the concerned workmen did not disclose the name of the

so-called intermediary through whom they received their wages The management submitted that the concern is a Govt of India undertaking and they are to follow the specific norms in the matter of selection and recruitment of workmen for their employment in the said colliery Disclosing this fact the management submitted that the concerned workmen have failed to produce a single scrap of paper to justify their claim that they worked under the management continuously for years together Accordingly the management submitted that the concerned workmen have falsely submitted their claim with a view to get their job by order of the Tribunal illegally and arbitrarily The management categorically submitted that the concerned workmen were never the employees under them and for which they are not entitled to get any relief which they have prayed for

4 The points for consideration in this reference are

Whether the demand of the Bihar Colliery Kamgar Union for regularisation of service of S/Shri Sarat Chaudhary and three others by the management of Shampur Colliery of M/s Nirsra Area of E C L is fair just and legal If not to what relief the workmen concerned are entitled ?

DECISION WITH REASONS

5 It is the specific claim of the concerned workmen that they used to work under the management as blacksmith for years together and they put in 240 days attendance in each calendar year during the period of their work It is also their specific claim that though continuously worked as blacksmith under the management the management used to pay their wages through intermediaries which were far below the wages of the permanent workers It has also been contended by them that for regularisation of their service they submitted several representation before the management but to no effect The management in their W S have categorically denied all these claims and allegation of the concerned workmen They submitted that the concerned workmen were never the employees under the management and also they were never paid wages through intermediary Now the point for consideration is whether the concerned workmen ever worked under the management directly The management submitted that they maintain the process lawfully as their concern is a Govt of India undertaking one in the matter of recruitment of workmen In course of hearing inspite of getting opportunities the concerned workmen have failed to produce a single scrap of paper to show that they were actually engaged by the management to perform their job No single paper is also forthcoming on the part of the concerned workmen that they ever worked under the management No satisfactory explanation is forthcoming why the concerned workmen did not disclose the name of the intermediaries through whom they used to receive wages There was scope on the part of the concerned workmen to examine the said intermediary in course of hearing but failed to examine him Record shows clearly that in spite of giving several opportunities the concerned workmen did not consider necessary to take any step or to adduce any evidence in order to substantiate their claim On the contrary it shows that they remained themselves absent for days together It is fact that the concerned workmen in their W S have

ventilated their claim against the management by placing certain facts. Facts disclosed in the W S. cannot be considered as substantive piece of evidence without its corroboration. Therefore, in absence of adducing any evidence I find little scope to give any importance to the facts disclosed in the W S. in support of the claim of the concerned workmen. After careful consideration of all the facts and circumstances I hold that the claim of the concerned workmen finds no basis at all and for which they are not entitled to get any relief which they have prayed for. In the result, the following Award is rendered —

“The demand of the Bihar Colliery Kamgar Union for regularisation of services of S/Shri Sarat Chaudhary and three others by the management of Shampur Colliery of M/s Nirsa Area of E C L is not fair, just and legal. Consequently, the concerned workmen are not entitled to get any relief.”

B BISWAS, Presiding Officer.

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1448.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 148/1991) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-3-02 को प्राप्त हुआ था।

[सं. एल-20012/24/88-आई.आर.(सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 3th April, 2002

S.O 1448.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref No 148/1991) of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of B C C L and their workmen, which was received by the Central Government on 28-3-02

[No L-20012/24/88-IR (C-1)]

S S GUPTA, Under Secy

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL NO II, AT DHANBAD

PRESENT

SHRI B BISWAS,

Presiding Officer

In the matter of an Industrial Dispute under Section
10(1)(d) of the I D Act, 1947

REFERENCE NO 148 OF 1991

PARTIES :

Employers in relation to the management of Gondudih Colliery of M/s Bharat Coking Coal Ltd and their workman

APPEARANCES :

On behalf of the workman None.

On behalf of the employers None

State : Jharkhand Industry Coal

Dated, Dhanbad, the 11th March 2002

AWARD

The Govt of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I D Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No L-20012/(24)/88 I R (Coal-I), dated, the 23rd October, 1991

SCHEDULE

“Whether the demand of the Rashtriya Colliery Mazdoor Sangh that Shri Doman Mahato and 23 others (given in the annexure) who were employed through a contractor, Shri Dinesh Singh, be regularised in the services of the management of Gondudih Colliery of M/s Bharat Coking Coal Ltd is justified? If so to what relief are the concerned persons entitled

2 The case of the concerned workman according to their W S in brief is as follows —

The concerned workman in the W S. submitted that in the year 1982 they were employed at Gondudih Colliery by the management through a contractor to undertake various kinds of regular job permanent and perennial in nature both on the surface and underground. They alleged that the said contractor was a Sham contractor and in the guise of the said contractor instead of regular recruitment the management used to employ different workmen in the name of the Dinesh Singh contractor to undertake different job of permanent and perennial in nature. They submitted that they used to carry on work under direct supervision and control of the supervisory staff of the colliery while on duty. They had to carry on all instructions of the Supervisory Officers. They alleged that in spite of rendering such jobs they were deprived of getting actual wages for the job used to draw and in this way they were de-prived of by the management and for which sustained serious financial loss during the tenure of their work. Even the management did not provide quarters, annual bonus, free medical benefits, D A, V D A, P F etc though their services were exploited extremely by the management taking the plea that they were employed by the so-called contractors. Accordingly they submitted representation before the management for regularisation of their services but the management refused to accept their representation. They raised an industrial dispute before the ALC(C) for conciliation. But as the said conciliation matter failed the ALC(C), Dhanbad referred the matter to the Ministry for taking appropriate action but when the Ministry refused to refer their dispute for adjudication they filed a Writ Petition before the Hon'ble High Court, Patna, Ranchi Bench. They submitted that the Hon'ble High Court, Ranchi bench in disposing of the said Writ petition directed the Ministry to re-consider its decision and pass appropriate order in accordance with the law preferably within three months. Accordingly in view of the order of

the Hon'ble High Court, Patna. Ranchi Bench the Ministry has referred this case for adjudication. The concerned workmen accordingly have prayed for passing an Award directing the management to regularise and departmentalise their work treating them as permanent employees from the date of their recruitment with full back wages and other benefits.

3 The management on the contrary after filing W S - cum-rejoinder have denied all the claims and allegation which the concerned workman asserted in their W S. The management in the W S relying on the claim of the concerned workmen submitted that the concerned workmen were the workmen of the contractor named Shri Dinesh Singh and for which no employer-employee relationship existed between them and the concerned workmen. The management further submitted that Dinesh Singh was a contractor from time to time for execution of engineering jobs as and when available on the basis of specific work order. The said work orders were issued for performing different jobs namely installation of machineries after transportation of the machine and other accessories connected with the installation of the machine etc. The management further submitted that the said contractor in order to perform the job as per work order used to engage workmen of his own for temporary periods according to the nature of job awarded to him. Accordingly the workmen who were employed by the contractor were temporary and casual in nature. They remained under the control and supervision of the contractor during the period of execution of contractual job. They paid also by the contractor and their services used to be terminated by the contractor as soon as a particular contractor work was over. The management submitted that the nature of work as claimed by the concerned workmen were not permanent and perennial in nature and for which there was no scope to say that they performed jobs of permanent and perennial in nature. The management also denied the fact that the said contractor was a camouflage one and they used to exploit the services of the concerned workmen in the guise of the said contractor with a view to avoid fresh recruitment of workmen. The management also denied the fact that the concerned workmen used to carry on jobs similar to that of the permanent employees but they were not paid equal wages which the permanent workers used to get. The management also disclosed that the question of giving other benefits to these workmen equally to that of the permanent workmen did not arise at all because they were not at all the employees of the management. They were out and out the workmen of the contractor and for which they are not entitled to get any relief which they have prayed for. The management further submitted that the concerned workmen never worked under the management for more than 240 days in each year when they worked under the management. In the result the management submitted that the claims of the concerned workmen are not justified, and accordingly the same may be rejected.

4 The points for decision in this reference are —

“Whether the demand of the Rashtriya Colliery Mazdoor Sangh that Shri Doman Mahato and 23 others as per annexure who were employed through a contractor Shri Dinesh Singh be regularised in the services of the management of Gondudih Colliery of M/s Bharat Coking Coal Ltd. is justified? If so to what relief are the concerned persons entitled?”

DECISION WITH REASONS

5 It is seen that the instant reference is pending for hearing since 1991. It is seen that inspite of giving several opportunities the concerned workmen have failed to take and step in the matter of hearing in the instant reference case for its disposal. The attitude of the concerned workmen if looked into will expose clearly that they are not at all interested to proceed with the instant reference case. However considering available papers on the record let me see if the claim of the concerned workmen finds any basis or not. It is admitted fact that one Dinesh Singh was a contractor under the management. It is also admitted fact that the management used to issue work order from time to time in favour of the said contractor to undertake certain job. It is also admitted fact that the said contractor from time to time in view of the said work orders carried on certain job under the management.

6 It is the contention of the concerned workmen that the said contractor was a sham contractor and the management through that sham contractor used to exploit their services instead of regularisation of their services as permanent workmen. They submitted that the job which they had to perform are permanent and perennial in nature. After implementation of Contract Labour (Regulation & Abolition) Act, 1970, the management is debarred from utilising the services of any workman of the contractor for performing the job which were permanent and perennial in nature. They alleged that knowing fully well of this specific provision of law the management exploited their services for undertaking jobs which were permanent and perennial in nature, though they were deprived of getting wages equally to that of the permanent workers. They even were deprived of getting other benefits from the management. The management no doubt has denied all these claims of the workmen categorically. They in support of their claim relied on different work orders issued to the contractors. I have considered all those work orders and I find support of the claim of the management. It is the specific claim of the management that on the basis of available jobs which were temporary in nature they issued those work orders. Naturally the jobs in question were not only temporary in nature but also the same were for a short period. As such the question of performing jobs by the concerned workmen which were permanent and perennial in nature finds no basis. Onus absolutely lies on the concerned workmen to establish that the contractor Dinesh Singh was a sham contractor under the management and secondly they had to undertake jobs under the management which were permanent and perennial in nature. I have already made my observation about the steps taken by the concerned workmen inspite of giving several opportunities in order to substantiate their claim. The concerned workman had ample scope to establish all their allegations which they have brought against the management but they have misused the same. The facts disclosed in the W S cannot be considered as substantive piece of evidence and for which in absence of its corroboration there is no scope to accept such contention. As the concerned workman have failed to substantiate their claim by adducing cogent evidence at this stage I do not find any sufficient ground to uphold their contention. As the concerned workman have failed to justify their claim miserably they are not entitled to get any relief which they have prayed for. In the result the following Award is rendered —

‘The demand of the Rashtriya Colliery Mazdoor Sangh that Shri Doman Mahato and 23 others as

per annexure who were employed through a contractor, Shri Dinesh Singh be regularised in the services of the management of Gondudih Colliery of M/s. Bharat Coking Coal-Ltd. is not justified. Consequently, the concerned workmen are not entitled to get any relief."

B. BISWAS, Presiding Officer.

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1449.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 58/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-3-02 को प्राप्त हुआ था।

[सं. एल-20012/104/96-आई.आर.(सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 3rd April, 2002

S.O 1449.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 58/97) of the Central Government Industrial Tribunal/Labour Court II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of B.C.C.L. and their workmen, which was received by the Central Government on 28-3-2002.

[No. L-20012/104/96-IR (C-1)]

S.S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO 2), AT DHANBAD

PRESENT

SHRI B. BISWAS,
Presiding Officer

In the matter of an Industrial Dispute under Section
10(1)(d) of the I. D. Act, 1947.

REFERENCE NO. 58 OF 1997.

PARTIES : Employers in relation to the
management of Block II
Area of M/s. B.C.C.L. and
their workman.

APPEARANCES :

On behalf of the workman None.

On behalf of the employers : None.

State : Jharkhand Industry : Coal.

Dated, Dhanbad, 12th March, 2002.

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d)

of the I. D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/104/96-I.R. (C-1), dated, the 14th May, 1997.

SCHEDULE

"Whether the demand of the Union for referring Shri Sheodani Beldar, Pump Operator to the Competent Medical Board for assessment of his age is justified? If so, to what relief is the concerned workman entitled?"

2. The case of the concerned workman according to his W.S. in brief is as follows :—

The concerned workman in his W.S. submitted that as per information collected from his parents his date of birth was 4-4-1946. He further submitted that date of birth recorded in his horoscope tallies with this information given by his parents. He submitted that in course of his employment the management issued service excerpts to him wherefrom he came to know that the age in this Form B Register was recorded as 50 years, on June, 1987. He disclosed that immediately he submitted his representation to the management to this effect and requested to send him to Apex Medical Board for assessment of his age, but the management has refused to entertain his petition. Accordingly he raised an industrial dispute before the ALC (C), Dhanbad for conciliation, which ultimately resulted reference to this Tribunal.

3. It has been disclosed by the concerned workman that Management arbitrarily and illegally recorded his age in the Form B Register without his knowledge. They also have violated the specific provision as laid down in JBCCI circular in the matter of assessment of age when gross anomaly was detected

4. The management on the contrary after filing W.S. cum-rejoinder have categorically denied all the claims and allegations which the concerned workman asserted in his W.S. They submitted that date of birth/age of the concerned workman is recorded in the Form B Register according to Section 48 of the Mins. Act, 1952, and unless and until any gross discrepancy is detected, that recording of age is to be considered as conclusive and final. It has been further submitted that as per age recorded in the Form B Register, the concerned workman completed 60 years of age on 30-6-97, and accordingly he superannuated from his service with effect from 1-4-97. Management submitted that at the sag end of his superannuation from service the concerned workman arbitrarily had raised this dispute with a view to get its benefit. It is submitted further that in support of his claim the concerned workman had failed to produce any cogent document. Accordingly there was no scope to draw any conclusion that age of the concerned workman recorded in the Form B Register was disputed. Management submitted that until and unless any gross discrepancy is detected, age of the workman recorded in the Form B Register should be considered as final and conclusive and for which there was no scope to refer the concerned workman to Apex Medical Board for assessment of his age at the sag end of his retirement

5. In the circumstances, the management submitted their prayer to reject the claim of the concerned workman.

6. The points for decision in this reference are :—

“Whether the demand of the Union for referring Shri Sheodani Beldar, Pump Operator to the Competent Medical Board for assessment of his age is justified? If so, to what relief is the concerned workman entitled?”

FINDINGS WITH REASONS

7. It is admitted fact that the concerned workman was an employee under the management. It is also admitted fact that the concerned workman was superannuated from his service with effect from 1-7-97. Admitting this fact the concerned workman submitted that his age was arbitrarily and illegally recorded in the Form B Register relying on which the management forcibly superannuated him from his service. He submitted that from his parents he got information that his date of birth was 4-4-1946. His horoscope also exposed the same date of birth. He alleged that instead of recording his exact date of birth in the Form B Register the management recorded his age as 50 years on June, 1997 without any basis. He disclosed that the moment he came to know about such illegal record of age from his service excerpts supplied to him by the management he submitted his representation to this effect and requested them to send him to the Apex Medical Board for assessment of his age. In this connection the concerned workman relied on JBCCI Circular No. 76.

8. It is fact that as per JBCCI Circular the Management has the scope to refer any workman to Apex Medical Board for assessment of his age if it is established that there is gross discrepancy in recording date of birth or age of the workman in the official register.

9. Therefore, onus absolutely lies on the concerned workman to establish that the management ignoring his actual date of birth recorded his wrong age in the Form B Register. It is seen from the record that inspite of getting ample opportunities the concerned workman did not consider necessary to appear before this Tribunal with a view to establish his claim. Facts disclosed in the Written statement submitted by the concerned workman cannot be considered as substantive piece of evidence untill and unless it is sufficiently corroborated by cogent evidence.

10. It is seen that the concerned workman at the fag end of his service had raised this dispute taking the plea that he came to know about his wrong recording of age from the service excerpt supplied by the management. The concerned workman in his W.S. was silent when he received the said service excerpt. The concerned workman also was silent which age as recorded in his identity card issued by the management and in the C.M.P.F. record. From his W.S. I do not find any whisper that the concerned workman was an illiterate person and for which he was not aware actually which age was recorded in the official register of the management. No satisfactory explanation is forthcoming what was the reason on his part to make such inordinate delay in raising such dispute. It is seen that the concerned workman at the fag end of his service has raised this dispute but he has failed to give any satisfactory explanation to this effect.

11. It is fact that as per J.B.C.C. I. Circular No. 76 there is scope to refer any workman before Apex Medical Board for assessment of his age but subject to fulfilment

of certain conditions. Until and unless this workman fails to make out his age within the periphery of that circular there is no scope to consider his claim and in that case particulars of age recorded in the Form B Register which is maintained according to Section 48 of the Mines Act shall be considered as conclusive and final.

12. Excepting the claim placed by the concerned workman he has failed to justify his claim by producing authentic documents. Accordingly I consider that the age of the concerned workman recorded in the Form B Register shall be considered as final and conclusive. I further hold that the management did not commit any illegality in superannuating the concerned workman with effect from 1-4-97 as per age recorded in the Form B Register. I have also failed to find out anything relying on which there is scope to say that the management also violated the principles of natural justice in refusing to send the concerned workman to the Apex Medical Board for assessment of his age.

13. As such after careful consideration of all the facts and circumstances I hold that the concerned is not entitled to get any relief which he has prayed for. In the result, following Award is rendered :—

“The demand of the Union for referring Shri Sheodani Beldar, Pump Operator to the Competent Medical Board for assessment of his age is not justified. Consequently, the concerned workman is not entitled to get any relief.”

B. BISWAS, Presiding Officer.

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1450.— औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबन्धतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 10/92) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-3-2002 को प्राप्त हुआ था।

[सं. एल-20012/169/91-आई.आर.(सी-1)]

एस. एस. गुप्ता, अवर सचिव

New Delhi, the 3rd April, 2002

S.O 1450.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref. No. 10/92) of the Central Government Industrial Tribunal II, Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of B.C.C.L. and their workmen, which was received by the Central Government on 28-3-02.

[No. L-20012/169/91-IR (C-1)]

S. S. GUPTA, Under Secy.

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (NO. 2). AT DHANBAD.

PRESENT :

SHRI B. BISWAS, Presiding Officer.

In the matter of an Industrial Dispute under Section
10(1)(d) of the I. D. Act., 1947.

REFERENCE NO. 10 OF 1992.

PARTIES : Employers in relation to the
management of Kenduadih
Colliery of M/s. B.C.C.L. and
their workman.

APPEARANCES :

On behalf of the workman : None.

On behalf of the employers : Shri H. Nath,
Advocate.

State : Jharkhand Industry : Coal.

Dated, Dhanbad, 12th March, 2002.

AWARD

The Govt. of India, Ministry of Labour, in exercise of the powers conferred on them under Section 10(1)(d) of the I. D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/(169)/91-I.R. (Coal-I), dated, the Nil.

SCHEDULE

"Whether the action of the management of Kenduadih Colliery of M/s. B.C.C.L. in refusing employment to the dependent of late Khusiyal Pasi is justified? If not, to what relief the dependent of the workman is entitled?"

2. The dispute in this reference case was referred to by the Govt. of India, Ministry of Labour for adjudication and since receipt of the said reference in the month of January, 1992 the concerned workman inspite of getting several opportunities has failed to turn up. He also did not consider necessary to file W.S. though the management after filing W.S. have denied the claim of the concerned workman as per reference.

3. According to the terms of reference the concerned workman has raised this industrial dispute as the management refused to give employment to his dependent of late Khusiyal Pasi who died in harness.

4. The management on the contrary after filing W.S.-cum-rejoinder submitted that late Khusiyal Pasi left his service out of his own accord in the month of August, 1978 and for which there was no employer and employee relationship between him and the management. Management further submitted that at the time of his death late Khusiyal Pasi was not on the roll of the company and as such the claim of the union for providing employment

to his dependent was not justified. Management further submitted that absence of Khusiyal Pasi from duty since August, 1978 without leave or intimation continuously till his death was in violation of Standing Orders applicable to the concerned workman and as such they are in no way obligated to provide employment to his dependent. Accordingly, the management submitted that the industrial dispute which has been raised by the concerned union finds no basis at all and for which the same is liable to be rejected.

5 The points for decision in this reference are :—

"Whether the action of the management of Kenduadih Colliery of M/s. BCC Ltd. in refusing employment to the dependent of late Khusiyal Pasi is justified? If not, to what relief the dependent of the workman is entitled?"

DECISION WITH REASONS

6 It is seen from the record that the concerned workman/union inspite of getting several opportunities did not consider necessary to submit W.S. even. On the contrary the management not only submitted W.S.-cum-rejoinder but also examined two witnesses. Management in the W.S. did not deny the fact relating to the death of Khusiyal Pasi. It has also been admitted by the management that the said Khusiyal Pasi joined at Kenduadih Colliery on 18-7-66 and his date of birth was 9-3-38. The Form B Register during evidence of MW-1 was marked as Ext. M-1 wherein service particulars of the deceased were duly recorded. Admitting all these facts management submitted that the deceased Khusiyal Pasi left his service in the month of August, 1978 and thereafter he did not turn up. MW-2 during his evidence corroborated the fact. Management submitted that providing employment to the dependent of the deceased could not be considered at all as he died after deserting his service long before. In support of the claim no cogent evidence on the part of the concerned workman is forthcoming. As such there is no scope to refuse the claim of the management. There is scope to provide employment to the dependent of the deceased as per provision of NCWA if it is established that the employee dies in harness. Accordingly it is to be established that the deceased actually was in service at the time of his death. As no incriminating materials to this effect is forthcoming. I hold that the concerned workman is not entitled to get any relief. I further hold that the management did not commit any illegality in refusing the claim of the concerned workman. There is also no reason to believe that the management has violated the principle of natural justice in denying the claim of the concerned workman. In the result, the following Award is rendered :—

"The action of the management of Kenduadih Colliery of M/s. BCC Ltd., in refusing employment to the dependent of late Khusiyal Pasi is justified. Consequently, the concerned workman is not entitled to get any relief."

B. BISWAS, Presiding Officer

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1451.—औद्योगिक विवाद अधिनियम, 1947
(1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार

बी सी सी एल के प्रबन्धन के सबद्ध नियोजको आर उनके कर्मकारों के बीच, अनुबध मे निर्दिष्ट औद्योगिक विवाद मे केन्द्रीय सरकार आद्योगिक अधिकरण II धनबाद के पचाट (सदर्भ सख्या 124/93) को प्रकाशित करती है, जा केन्द्रीय सरकार को 28-3-02 को प्राप्त हुआ था।

[स एल-20012/184/92-आई आर (सी 1)]

एम एस गुप्ता अवर सचिव

New Delhi the 3rd April 2002

S.O 1451. —In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947) the Central Government hereby publishes the award (Ref No 124/93) of the Central Government Industrial Tribunal II Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of B C C L and their workmen which was received by the Central Government on 28-3-02

[No L-20012/184/92-IR (C-1)]

S S GUPTA Under Secy

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT
INDUSTRIAL TRIBUNAL (No 2) AT DHANBAD

PRESENT :

SHRIB BISWAS Presiding Officer

In the matter of an Industrial Dispute under Section
10(1)(d) of the I D Act 1947

REFERENCE NO 124 OF 1993

PARTIES : Employers in relation to the
management of Patherdih
Colliery of M/s B C C L and
their workman

APPEARANCES :

On behalf of the workman	Shri S N Roy Authorised representative
On behalf of the employers	Shri D K Verma Advocate
State Jharkhand	Industry Coal

Dated Dhanbad 11th March 2002

AWARD

The Govt of India Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d) of the I D Act 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No L-20012/(184)/92-IR (Coal-I) dated the 6th September 1993

SCHEDULE

Whether the management of Patherdih Coal Washery under CCWO of M/s B C C L in are

justified in not supplying free coal for domestic use to the 70 workmen (as per list attached to the schedule of reference) of their establishment or in not paying adequate compensation in lieu thereof? If not to what relief the workman are entitled and since when?

2 The case of the concerned workmen according to W S in brief is as follows —

The concerned workman submitted that they being the employees under the management had been covered by the terms of reference of existing facilities of supply of raw coal @ 8 baskets per head per month. But the management without giving any notice had cut down/stopped to supply coals. They even did not issue any notice before stopping supply of coal to them and as a result of which they have changed their service condition illegally which is against the principles of natural justice. They submitted that over this issue they made several representations to the management but the management did not pay any heed to their request. As a result the concerned workmen raised an industrial dispute before the ALC(C) Dhanbad which ultimately resulted reference to this Tribunal.

3 The management on the contrary after filing W S - cum-rejoinder have denied all the claims and allegations which the concerned workmen asserted in their W S. The management submitted that at the time of fixation of wages for the workmen employed in a particular industry the minimum wages is decided taking into consideration the value for cloth food fuel electricity and house accommodation taking into account the four units of a family. After arriving at the minimum wages the other allowances are added to the wage structure to ensure comfortable living condition to a workman employed in that particular industry. The management submitted that the facilities of U G allowances and free coal had not been provided to the persons employed in the industries connection with the production and manufacture of steel fertilizer refractories. They submitted that Patherdih Coal Washery does not produce any coal but coal is washed for utilisation in steel industry. It has been submitted that the Patherdih Coal Washery actually was under the control of the Steel authority of India. After its merger with M/s BCCL the employees of Steel Authority of India working under M/s BCCL continued to get all the benefits and privileges and wages as per their past condition of service. Accordingly the employees of Patherdih Coal Washery i.e. the concerned workmen cannot demand supply of free coal as the same is not produced in the washery and there is no provision of purchase of coal and supply the same to them. Accordingly the management have submitted their prayer to pass an Award rejecting the claim of the concerned workmen.

4 The points for consideration in this reference are —

Whether the management of Patherdih Coal Washery under CCWO of M/s B C C L are justified in not supplying free coal for domestic use to the 70 workmen (as per list attached to the schedule of

reference) of their establishment or in not paying adequate compensation in lieu thereof? If not to what relief the workmen are entitled and since when? "

DECISION WITH REASONS

5 The concerned workmen in order to substantiate their claim have examined one witness while the management also examined one witness in support of their claim. The concerned workman i.e. WW-1 during his evidence admitted that initially Patherdih Coal Washery was under control of Steel Authority of India Ltd. The Steel Authority of India had no colliery of its own. Patherdih Coal Washery is not also considered as coal mines. This witness admitted during his evidence that the employees of Steel Authority of India did not get coal free of cost. He admitted that after washing coal in the washery the best quality of coals are sent to the Steel Plant Thermal Power plant for utilisation while low grade and rejected coals are supplied for domestic use. Disclosing this fact he submitted that so long he worked in the colliery from 1980 to August 1995 he received coal free of cost. This witness disclosed that initially he was appointed at Sudamdih Colliery as driver and thereafter he was transferred to Patherdih Coal Washery in the month of September 1985 and since then the management is not supplying them coal to him which he enjoyed during his work at Sudamdih Colliery. It is the contention of WW-1 that the management has illegally curtailed the facilities of supplying of coal without any reason. On the contrary MW-1 during his evidence disclosed that Patherdih Coal Washery was originally under Hindustan Steel Ltd. and subsequently it was taken over the Steel Authority of India and thereafter it was merged with the BCCL with effect from 1-10-83. He submitted that the employees of the washery who were serving there from before were being guided by the Rules of Steel Authority of India and after merger of the washery to the BCCL option was invited from the workers whether they wished to be guided by the service condition of SAIL or BCCL. He submitted that the workers of the Washery opted service condition of SAIL because of the fact that the pay structure of the SAIL is higher than the BCCL. He never received free coal for domestic purpose from their parent department. The employees were never supplied with coal free of coal for domestic purpose and after their merger they are not entitled to get the same. Only the new employees of BCCL in the washery are entitled to supply of coal free of cost against their requisitions. Accordingly all the employees of BCCL were supplied cards for obtaining supply of coal for domestic purpose against individual applications. The concerned workmen in course of evidence relied on two office order issued by the G.M. (Admin.) which were marked as Ext. W1 and W2. Now considering the evidence of both sides it is clear that actually the Patherdih Coal Washery was under the ownership of Hindustan Steel Ltd. and thereafter it was taken over by the SAIL and subsequently it was merged with BCCL on 1-10-83. It is also admitted fact that Patherdih Coal Washery is not a mine. Here the raw coals are washed and the best quality of the coals are sent to the Steel Plant for use. It is also seen that even after merger the workmen of the SAIL are enjoying the service condition of SAIL because of the fact that benefits which they receive are better than that of the benefits which the workmen of the BCCL enjoys.

Considering the evidence of both sides it is also clear that the employees of BCCL obtained supply of coal for domestic purposes as per card issued by the management. It is the contention of the management that the concerned workmen were originally the employees of the SAIL and who are still enjoying the service benefits of SAIL inspite of its merger with BCCL have never received coal free of cost as part of their service condition. I have considered two orders which the concerned workmen relied on Ext. W1 and W2. From these two orders it transpires clearly that the management decided to provide one L.P.G. Cylinder to the employees of C.C.W. subject to the production of certificate in their name relating to L.P.G. connection and that facility was provided only exclusively to BCCL staff with effect from August 1995. By the same order the management also decided to stop supply of soft coal forthwith. Therefore from these two orders it transpires clearly that the supply of coal free of cost to the employees of BCCL have been stopped from August 1995 and the management agreed to bear expenses of one L.P.G. Cylinder subject to production of certificate to that effect. These two orders clearly shows that the employees of BCCL though enjoyed free supply of coal had been stopped from getting so from August 1995. It is clear considering the evidence on record that the concerned workmen actually were the workmen of SAIL and after its merger with the BCCL they are also enjoying the service condition which was with the SAIL. Therefore the concerned workmen cannot avoid responsibility to establish that inspite of getting service privileges of their parent's department they were entitled to free supply of coal from the management. In course of hearing the concerned workmen have failed to produce a single scrap of paper that ever they received free supply of coal from the present management though originally they were the employees of the SAIL. The representative of the concerned workmen in course of hearing expressed his inability to produce any such cogent paper in support of this claim. It is seen that the present management has stopped supply of coal free of cost to the employees and instead they started paying price of one L.P.G. cylinder subject to production of certificate in their name. When the management has failed to do this until and unless any contrary is proved the concerned workmen are not entitled to get coal free of cost particularly when they are enjoying the service condition of their previous dispute inspite of the department's merger with the present management. I consider that the management did not issue any illegal and arbitrary order refusing the claim of the concerned workman. The question of natural justice definitely would come if it was established that the management illegally and arbitrarily has stopped the supply of coal free of cost to the concerned workmen. As the concerned workmen have failed to establish this fact with cogent papers I do not consider that the management has violated the principles of natural justice in not considering their prayer. Accordingly the concerned workmen are not entitled to get any benefit which they have prayed for. In the result the following Award is rendered —

The management of Patherdih Coal Washery under CCWO of M/s BCCL are justified in not supplying free coal for domestic use to the 70 workmen (as per list attached to the schedule of reference) of their establishment or in not paying adequate compensation in lieu thereof.

Consequently the concerned workmen are not entitled to get any relief'

B BISWAS Presiding Officer

नई दिल्ली, 3 अप्रैल 2002

का.आ. 1452.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी सी सी एल के प्रबन्धतंत्र के सबद्ध नियोजको आर उनके कर्मकारों के बीच, अनुबध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II धनबाद के पचाट (सदर्भ संख्या 94/99) को प्रकाशित करती है जो केन्द्रीय सरकार का 28-3-2002 को प्राप्त हुआ था।

[स एल-20012/189/98-आई आर (सी-1)]

एम एस गुप्ता, अवसर सचिव

New Delhi the 3rd April 2002

S.O 1452.—In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947) the Central Government hereby publishes the award (Ref No 94/99) of the Central Government Industrial Tribunal II Dhanbad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of B C C L and their workmen which was received by the Central Government on 28-3-2002

[No L-20012/189/98-IR (C-1)]

S S GUPTA Under Secy

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (No. 2), AT DHANBAD

PRESENT:

SHRI B BISWAS Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I D Act 1947

REFERENCE NO 94 OF 1999

PARTIES: Employers in relation to the management of General Manager B C C L and their workman

APPEARANCES:

On behalf of the workman Shri S C Gaur Advocate

On behalf of the employers Shri H Nath Advocate

State Jharkhand Industry Coal

Dated Dhanbad 11th March 2002

AWARD

The Govt of India Ministry of Labour in exercise of the powers conferred on them under Section 10(1)(d)

of the I D Act 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No L-20012/189/98 IR (CM-I) dated the 27th January, 1998

SCHEDULE

Whether the action of the management of Kankanee Colliery of M/s BCCL in not regularising Sh Ram Prasad Mallah M/Loader as Clerk, who was deployed in the clerical job since his joining i.e 9-11-1987 till the filing of the I D by the union is justified? If not to what relief is the said workman entitled?

2 In this reference both the parties appeared and filed their respective W S documents etc Subsequently when the case was fixed for hearing learned Advocate appearing for the concerned workman submitted that as the Hon ble High Court of Jharkhand passed an order for regularisation of the services of the concerned workman he is not willing to proceed with the hearing of the instant reference Learned Advocate for the management submitted that the services of the concerned workman by order of the Hon ble High Court has already been regularised and accordingly he conceded to the submission of the learned Advocate for the concerned workman Perused the order of the Hon ble High Court Jharkhand In the said order His Lordship of the Hon ble High Court Jharkhand clearly observed the following —

Having regard to the facts and circumstances as the Respondents themselves regularised the service of petitioner as Dumpman/Dripman in Clerical Grade-III they are directed to restore the original order of Regularisation No 2264 dated 12th/13th July 1999

The order dated 23rd/26th July 2001 is set aside

The petitioner is directed to join the post of Dumpman/Dripman (Clerical Grade-III) as per Order No 2264 dated 12th/13th July 1999 within a month However he will not be entitled for salary of the aforesaid post of the Dumpman/Dripman for the period he has not worked against such post though the period to be counted for the purpose of fixation of pay seniority etc

The counsel for the petitioner submits he will request the union not to pursue the reference case if any made relating to regularisation of petitioner The Respondents are given liberty to bring this order to the notice of the competent authority if any such reference case for regularisation of service of petitioner is pending

As such considering the submission of both sides it transpires clearly that at present no dispute existed in between the parties Therefore there is no sufficient reason to proceed with the hearing of the instant case Accordingly a No dispute Award is rendered and the reference is disposed of on the basis of the No dispute Award presuming non-existence of any industrial dispute between the parties

B BISWAS Presiding Officer

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1453.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण II, धनबाद के पंचाट (संदर्भ संख्या 86/1996) को प्रकाशित करती है, जो केन्द्रीय सरकार को 28-03-02 को प्राप्त हुआ था।

[सं. एल-20012/234/95-आई.आर. (सी-I)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 3rd April, 2002

S.O. 1453.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref No 86/1996) of the Central Government Industrial Tribunal II, Dhanbad as shown in the Annexure, in the Industrial Dispute between the employers in relation to the management of BCCL and their workman, which was received by the Central Government on 28-3-2002

[No L-20012/234/95-IR(C-1)]

S S GUPTA, Under Secy

ANNEXURE

BEFORE THE CENTRAL GOVT INDUSTRIAL
TRIBUNAL (NO 2) AT DHANBAD

PRESENT

Shri B BISWAS,
Presiding Officer

In the matter of an Industrial Dispute under Section 10(1) (d)
of the I D Act, 1947

REFERENCE NO. 86 OF 1996

PARTIES: Employers in relation to the
management of U G Mine of M/s
BCCL and their workman

APPEARANCES:

On behalf of the workman	None
On behalf of the employers	None
State Jharkhand	Industry Coal

Dated, Dhanbad, the 12th March, 2002

AWARD

The Govt of India, Ministry of Labour in exercise of powers conferred on them under Section 10(1) (d) of the I D Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No L-20012/234/95-IR (Coal-I), dated the 20th/21st August, 1996

SCHEDULE

“Whether the Union’s demand for employment of Smt Saraswati Devi as dependent of Late Kartik Ch Dey who died while in service of the management of Bhowra (UG) Mine of M/s BCCL is justified? If so, to what relief is Smt Saraswati Devi entitled?”

2 The case of the concerned workman according to the W S. in brief is as follows —

The concerned workman in the W S submitted that one Kartik Chandra Dey was permanent employee of

Bhowra (N) UG Mines under Bhowra Area No XI of M/s BCCL. He worked there as Fan Operator. The concerned workman submitted that in course of his employment the said Kartik Chandra fell ill seriously and died thereafter. Accordingly being the widow of the deceased submitted an application before the management for her employment in the colliery in place of her husband under clause 9 4 2 of NCWA-IV but as the management has refused to consider her petition she raised an industrial dispute before the ALC(C) for conciliation which ultimately resulted reference to this Tribunal for adjudication

3 The management on the contrary after filing W S - cum-rejoinder have denied all the claims and allegation which the concerned workman asserted in their W S. It has been disclosed by the management that the deceased Kartik Chandra Dey during his life contracted three marriages. His first marriage was with Smt Bhadi Dey, second marriage was with Saraswati Dey i.e. the concerned workman and third marriage was with Smt Bari Dey. He got two sons from his first wife and one son and one daughter through his second wife and one daughter through his third wife. It has been alleged by the management that the deceased workman adopted polygamy contrary to their knowledge. They disclosed that had that been in their knowledge the deceased workman would have been dismissed from service at an early date. However, the management submitted that the concerned workman was the second wife of the deceased workman. As according to Hindu Marriage Act second and third marriage are void marriage there was no scope on the part of the management to consider her claim for employment after the death of the deceased workman. The management further submitted that during the pendency of that petition submitted by the present workman the eldest son of the deceased workman submitted a petition for his employment. The management submitted that the said son failed to produce any material in support of his claim for employment to the effect that he was dependant on the earning of late Kartik Ch Dey and also he used to live with him. The management submitted further that in view of the claim and counter claims and in validity of the second and third marriage and in the absence of justifiable ground the management was not in a position to consider the claim of the present workman. They further alleged that the sponsoring union knowing fully about all these facts illegally sponsored the dispute of the concerned workman which cannot be accepted legally. In the result, the management have prayed for passing an Award setting aside the claim of the concerned workman

4 The points for decision in this reference are —

“Whether the Union’s demand for employment of Smt Saraswati Devi as dependent of Late Kartik Ch Dey who died while in service of the management of Bhowra (UG) Mine of M/s BCCL is justified? If not, so, to what relief is Smt Saraswati Devi entitled?”

DECISION WITH REASONS

5 It is admitted fact that Kartik Chandra Dey was an employee under the management. It is also an admitted fact that Kartik Chandra Dey died in harness while he was in service. The concerned workman submitted that she was the legally married wife of Kartik Chandra Dey and accordingly she submitted representation before the management for her employment as per provision of 9 4 2 of NCWA-IV after the death of her husband. It is seen that the management before considering the claim of the

concerned workman made an enquiry through office of the B D O Santuri Govt of West Bengal. After enquiry B D O submitted his report vide Memo No 636 dated 9-11-1993 relating to the credibility of the claim of the concerned workman. From the report of the B D O it transpires that Saraswati Devi was the second wife of the deceased. From the report it further transpires that credibility of Saraswati Devi could not be verified as she was not found present at the time of enquiry. The report further shows that Smt Bani Dey was the third wife of said Kartik Chandra Dey. It further reveals that Sri Lakhikanta Dey, son, Smt Saraswati Dey, second wife, Chandana Dey daughter, Sri Patit Paban Dey, son of the deceased never resided in the house of the deceased at village Gangpur. Therefore, from the report of the B D O it reveals clearly that the concerned workman was the second wife of the deceased. It is seen that in the W S the concerned workman has totally suppressed the fact that late Kartik Chandra Dey during his life time contracted three marriages and she was the second wife of him. There is no dispute to hold that according to the Hindu Marriage Act, marriage for the second time with any lady or third time with another lady in presence of the first wife should be considered as a void marriage. No evidence is forthcoming before this Tribunal if the first wife of the deceased was alive when he contracted marriage with the concerned workman. The concerned workman in her W S also did not disclose anything to this effect. Therefore, there is scope to draw presumption that deceased Kartik Chandra Dey contracted second marriage and third marriage during the life time of his first wife and such presumption will definitely find its force because of the fact that he contracted third marriage while his second wife was very much alive. Accordingly as per provision of law the management did not commit any illegality in ignoring the claim of the concerned workman for her employment. The concerned workman had the scope to establish her claim before this Tribunal. But in spite of getting opportunity she has failed to establish her claim. After careful consideration of all the facts and circumstances, I hold that the management did not commit any illegality in refusing the claim of the concerned workman. In the result, the following Award is rendered —

“The Union’s demand for employment of Smt Saraswati Devi as dependent of Late Kartik Ch Dey who died while in service of the management of Bhowra (UG) Mine of M/s BCCL is not justified. Consequently, the concerned workman is not entitled to get any relief.”

B BISWAS, Presiding Officer

नई दिल्ली, 03 अप्रैल, 2002

का.आ. 1454 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एन ई पी सी एअर लाइंस के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पचाट (सदर्भ सख्या 735/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-4-2002 को प्राप्त हुआ था।

[स एल-11012/05/93-आई आर. (सी-1)]

एस एस गुप्ता, अवर सचिव

New Delhi, the 3rd April 2002

S.O. 1454.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the award (Ref No 735/2001) of the Central Government Industrial Tribunal Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of NEPC Air Lines and their workman, which was received by the Central Government on 2-4-2002

[No L-11012/05/98-IR(C-1)]

S S GUPTA, Under Secy

ANNEXURE

BEFORE THE CENTRAL GOVT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 28th February, 2002

Present K KARTHIKEYAN,
Presiding Officer

INDUSTRIAL DISPUTE No. 735/2001

(In the matter of the dispute for adjudication under clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between the workman Captain K K Sainani and the Management of NEPC Airlines, Chennai)

BETWEEN

Captain K K Sainani I Party/Workman

AND

The Chairman & Managing Director,
NEPC Airlines,
Chennai II Party/Management

Appearance:

For the Workman M/s R Vargat &
Annamathew. &
C Sasikumar,
Advocates

For the Management M/s S R Rajagopal,
K Vasuvenkat &
S R Raghunathan,
Advocates

The Govt of India, Ministry of Labour in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2 (A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the following dispute for adjudication vide Order No L-11012/05/98-IR(C-1) dated 7-9-2001 -

- “1 Whether the action of the Management of NEPC airlines in terminating the services of Capt K K Sainani w e f 4-8-97 is legal and justified ?
- 2 Whether the management is justified in not paying the dues of Sri Sainani for adjusting the balance cost of Training whereas the workman has not voluntarily left the service or violated any conditions attached to the said training ?

3 If not, to what relief is the workman entitled and what are his legal dues ?”

2 On receipt of the order of reference from the Government of India, Ministry of Labour, the case has been taken on file as I D No 735/2001 and notices were sent to both the parties to the dispute, with a direction to appear before this Tribunal on 17-10-2001 to prosecute this case further

3 When the matter came up before me for final hearing on 28-2-2002, upon perusing the order of reference, memo filed to-day by the counsel for the Petitioner with the xerox copy of Compromise Agreement entered into between the I party/Workman and the II Party/Respondent, and after hearing the counsel on either side and on recording the memo filed by the counsel for the I Party/Workman, this Tribunal has passed the following —

AWARD

4 The I party/Workman Captain K K Sainani has raised this industrial dispute against the II Party/management NEPC airlines, questioning their action in terminating his service with effect from 4-8-97 as illegal and unjustified. It is also his contention in this industrial dispute that the Management is not justified in not paying the dues to him for adjusting the balance cost of training, whereas he has not voluntarily left the service or violated any conditions attached to the said training

5 This matter has been referred to this Tribunal for adjudication by an order of the Govt by its reference dated 7-9-2001. On receipt of the reference from the Ministry, the matter has been taken on file as I D No 735/2001 and notices were sent to the parties concerned by Registered Post with acknowledgement due, with a direction to appear before this Court either in person or through their authorised representatives on 17-10-2001 to prosecute this case by filing their respective statements in respect of this industrial dispute

6 On receipt of notice, the II Party/management entered appearance through a counsel and he filed vakalat. The I Party/Workman did not appear for the first hearing. So, a fresh notice was ordered for the hearing on 16-11-2001. On that day also, the I Party/Workman did not appear. Again a fresh notice has been ordered to the I Party/Workman for the hearing on 29-11-2001. On that day, as usual, the I party/Workman did not appear. At the request of the counsel for the II Party/Management, time was granted for filing their objections for the claim made by the I Party in the industrial dispute raised against them. Accordingly, on the next hearing they have filed statement of objection disputing the claim of the I Party/Workman as incorrect and they have also stated that the action taken by the II Party/Management against the I Party/Workman is legal and justified. On 27-01-2002, the I Party/Workman entered appearance through his counsel and has represented that he has no Claim Statment to file and filed a petition seeking adjournment for four weeks alleging that the matter is being settled between the parties and the matter can be adjourned for reporting settlement. Accordingly, the matter was adjourned to this date

7 To-day, when the matter was taken up for enquiry, the junior counsel representing the counsel on record files a memo stating that the dispute in question has been settled between the parties and as per the said settlement dated 6-2-2002, the Petitioner has agreed to withdraw the present industrial dispute. After hearing both the parties and the

learned counsel for the II Party/Management, the memo has been recorded

8 In view of the Memo filed by the I Party/Workman and on recording that memo this industrial dispute raised by the I Party/Workman Captain K K Sainani against the II Party/Management, NEPC Airlines, Chennai is closed as withdrawn. An Award is passed accordingly. The xerox copy of the compromise agreement between the parties shall form part of the Award

(Dictated to the Stenographer transcribed and typed by him corrected and pronounced by me in the open court on this day the 28th February 2002)

Encl Xerox copy of the Compromise Agreement
Dated 6-2-2002

K KARTHIKEYAN Presiding Officer

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1455 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एअर इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण चेन्नई के पचाट (सदर सख्या 560/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-4-2002 को प्राप्त हुआ था।

[स एल-11012/164/2000-आई आर (सी-1)]

एस एस गुप्ता, अवर सचिव

New Delhi the 3rd April 2002

S.O. 1455.—In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947) the Central Government hereby publishes the award (Ref No 560/2001) of the Central Government Industrial Tribunal Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Air India and their workman which was received by the Central Government on 2-4-2002

[No L-11012/164/2000-IR(C-1)]

S S GUPTA, Under Secy

ANNEXURE

BEFORE THE CENTRAL GOVT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 28th February, 2002

Present K KARTHIKEYAN,
Presiding Officer

INDUSTRIAL DISPUTE No. 560/2001

(In the matter of the dispute for adjudication under Clause (d) of Sub-section (1) and Sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between Ms Susila and the Management of Air India, Chennai)

BETWEEN

Ms Susila

I Party/Workman

AND

The Southern Regional
Manager,
Air India, Chennai

II Party/Management

Appearance:

For the Workman	M/s D Dhanam & D R A Vedhanayagam Advocates
For the Management	M/s Ramasubramaniam & Associates, Advocates

The Govt of India, Ministry of Labour in exercise of powers conferred by clause (d) of Sub-section (1) and Sub-section 2 (A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the Industrial Dispute for adjudication vide Order No L-11012/164/2000-IR(C-1) dated 16-03-2001

On receipt of the order of reference from the Government of India, Ministry of Labour, this case has been taken on file as I D No 560/2001 and notices were sent to both the parties to the dispute, with a direction to appear before this Tribunal on 19-04-2001 to prosecute this case further. Accordingly, both the parties were appeared along with their respective counsel and have prosecuted this case by filing their Claim Statement and Counter Statement respectively

When the matter came up before me for final hearing on 06-03-2002, upon perusing the Claim Statement, Counter Statement, the other material papers on record, and after hearing the arguments advanced by the learned counsel on either side, this matter having stood over till this date for consideration, this Tribunal has passed the following —

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt for adjudication by this Tribunal is as follows —

“Whether demand of the workman Ms Susila that she may be reinstated in service and absorbed as regular workman of Air India is justified? If so, to what relief is the workman entitled and from what date?”

2 The averments in the Claim Statement of the I Party/Workman Ms Susila are briefly as follows —

The Petitioner was employed as a cleaner by the II Party/Management of Air India at the Madras Airport at Chennai. She was employed continuously from September, 1994 to April, 1995 and again from May, 1995 to November 1995. She was paid a sum of Rs 550 as monthly salary. A sum of Rs 60 for provident fund and Rs 9 for ESI have been deducted in her salary by the II Party/Management as such she was a permanent worker. Petitioner having been treated as employee of the II Party/Management, was terminated from service in the year 1995 without any notice or intimation so as to deny her permanency and to induct in her place fresh employee. She was not permitted to work further even though work was available for her continuous employment. It is with a view to deny the benefits that would accrue to her, the II Party/Management with a view to avoid giving the benefits of continuous employment, want only terminated the Petitioner from service in the year 1995. In order to prevent continuous service and claim for permanency the II Party/Management restored to the unfair labour practice by terminating her from service without giving her notice under law to evade the protection offered

by the Industrial disputes Act and Tamil Nadu Industrial Establishment (Conferment of Permanent Status of workman) Act. Such termination of the Petitioner/Workman is retrenchment within the meaning of Section 2 (oo) of Industrial disputes Act, 1947. Prior to the termination of the service of the Petitioner, the mandatory conditions precedent laid under Section 25N and 25F of the Industrial Disputes Act, 1947 have not been followed by the II Party/Management. Cleaning the Airport is a control industry for which the appropriate Government is the Central Govt and therefore, the Petitioner raised an industrial dispute under Section 2A of the Act before the Assistant Labour Commissioner (Central), Chennai. On failure of conciliation, he referred this dispute and on submission of his report to the Government, the Govt was pleased to refer this dispute for adjudication of this Hon'ble Tribunal. The Petitioner was issued with a temporary pass by the Government of India, Bureau of Civil Aviation Security. The termination of the Petitioner is unsustainable in law. The impugned termination of the Petitioner is arbitrary, illegal and capricious. The action of the II Party/Management in terminating the services of the Petitioner amounts to retrenchment within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947. The work done by the Petitioner was permanent and perennial in nature. To deny the benefits of permanency to the Petitioner, the II Party/Management employed new workmen for short period and then sending them out of service and again engaging a batch of workers for the same work, which was done by the workman like the Petitioner earlier. This device was adopted by the II Party/Management and the same amounts to unfair labour practice. The above action of the II Party/Management is a deliberate device adopted by them to evade the protection afforded by the Industrial Disputes Act, 1947 and Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workman) Act. The action of the II Party/Management in terminating the services of the Petitioner, though she had been employed from September, 1994 to April, 1995 is violative of Section 25N and 25F of the Industrial Disputes Act, 1947. The II Party/Management is not justified in refusing to confer permanency on the Petitioner, even though the work done by the Petitioner was permanent and perennial in nature. The Petitioner is a widow who has a large family to support and due to the action of the II Party/Management in terminating the services of the Petitioner, her family has been facing severe economic and mental hardship. At the time of termination of her service the Petitioner was paid Rs 550 per month as wages. The permanent employees of the II Party/Management in the last grade were paid Rs 2350 per month. Therefore, it is prayed that this Hon'ble Tribunal may be pleased to direct the II Party/Management to reinstate the Petitioner in service and regularise and absorb her service in the II Party/Management and pay all her back wages and monetary benefits as was paid to the permanent workmen with all other consequent benefits including seniority etc.

3 The averments in the Counter Statement filed by the II Party/Management Air India, Chennai (hereinafter refers to as Respondent) are briefly as follows —

The Respondent denies all the allegations and averment in the Claim Statement filed by the Petitioner except that those are specifically admitted herein. The dispute raised by the Petitioner against this Respondent is not maintainable, since there was no employer-employee relationship between the Respondent and the Petitioner at

any point of time On this ground, the dispute is liable to be dismissed in limine The Petitioner has raised this dispute after a delay of almost six years and this dispute is liable to be dismissed on the ground of delay and laches also The Respondent is a company registered under the provisions of the Companies Act, 1956 The Respondent/Management has got a number of permanent workers for attending to normal operations The Respondent/Management according to their requirements engaged contractors for cleaning the Air India premises at Chennai During the period mentioned by the Petitioner, the Respondent had arrangements with the contractors for carrying out the cleaning of their premises The then contractors engaged their own men/women and supplies labourers to do the work in the offices of the Respondent/Management at Chennai As per the said agreement, the Respondent/Management did not have any control or supervision over the workers engaged by the contractors the contractors undertook to supply labour for attending to do the cleaning job The Respondent/Management at no point of time engaged the Petitioner Since the Respondent/Management had arrangements with the contractors, as per the requirement, the Respondent/Management used to inform the contractors to supply manpower The Respondent/Management for engaging the contractors had taken out registration under the Contract Labour (Abolition and Regulation) Act from the Labour Department, Government of India Since the Respondent has taken out registration for engaging contract labour through the contractors, the contract between the Respondent and the contractors were valid one It is denied that the Respondent had ever engaged the Petitioner to do the cleaning job and puts the Petitioner to strict proof of the same Since the Petitioner claims that she had worked during the period mentioned in the petition, she might have worked with the contractors, who had been entrusted with the job of housekeeping of the Respondent premises during that period However, there was no employer and employee relationship between the Respondent and the Petitioner A perusal of the documents available with the Respondent/Management does not indicate that the Petitioner was at any time an employee of the Respondent/Management The wages were paid to the contract labourers only by their employers i.e. the respective contractors In the circumstances, the records of the Respondent do not reveal any wages paid or any contributions made by the name of the Petitioner The records of the Respondent did not reveal that there was at any time any master and servant relationship between the petitioner herein and the management The Respondent never employed the petitioner and hence the question of alleged termination does not arise the employees of the contractors were all working under the personal control and supervision of the supervisors employed by the said contractors The engagement of the contract labour was handled completely, independently by contractors and the Respondent/Management had no say in their employment The conditions of service of the contract labour was determined and fixed only by the said contractors Disciplinary control over the contract labourers also vested only with the contractors concerned thus, in all respects, the contractors were the employers of the said labourers engaged by them Hence, the question of application of provisions of Industrial Disputes Act, 1947 or any other enactments do not arise If at all any person is aggrieved, he/she to take up the matter only with the said contractors The Respondent is in no way connected with the alleged termination of

services of contractor's workman As regards the petition filed by the petitioner before the Labour Commissioner is concerned, this Respondent filed the counter in the said petition, explaining the above facts the conciliation ended in a failure and subsequently, the same was referred to this Hon'ble Tribunal for adjudication As regards the averments in the Claim Statement of the Petitioner regarding issue of passed by Bureau of Civil Aviation Security to the petitioner is concerned, since the Airport is declared as a restricted area and it is a prerequisite to process passes issued by the Bureau of Civil Aviation Security, it is possible for Air India as a principal employer might have facilitated the issuance of Bureau of Civil Aviation Security passes to the contract workmen for their working in Air India premises at Airport as and when necessary The Respondent neither appointed nor terminated the Petitioner as alleged Hence, the question of retrenchment within the meaning of Section 2(oo) or violation of Section 25N or 25F of the Industrial Disputes Act, 1947 does not arise at all It is denied that the work alleged to have been done by the Petitioner was permanent and perennial in nature The allegations that the Respondent employs new workers for a short period and again engaging fresh workers for the same work in order to deny the benefit of permanency are denied as false and baseless The Respondent puts the Petitioner to strict proof of the same The Respondent did not have any direct relationship with the contract labourers The contract labourers were engaged through the contractors depending upon the requirement Hence, violation of provisions of Industrial Disputes Act, 1947 or any other enactment does not arise at all The averments contained in para 9 of the claim petition are made just to gain sympathy of this Hon'ble Court the casuals directly engaged by the Respondent were paid a sum of Rs 61/- per day, whereas the Petitioner claimed to have received monthly wages of Rs 550/- This itself, clearly establishes that her claim of employment with the Respondent is baseless In the circumstances it is prayed that this Hon'ble Court may be pleased to dismiss the dispute as not maintainable

4 When the matter was taken up finally for enquiry, no one has been examined as a witness on either side No document has been filed on either side as exhibits The learned counsel on either side have advanced their arguments

5 The point for my consideration is—

“Whether demand of the workman Ms Susila that she may be reinstated in service and absorbed as regular workman of Air India is justified? If so, to what relief is the workman entitled and from what date?”

Point —

This dispute referred to for adjudication is in respect of demand of the Petitioner Ms Sushila for reinstatement in service and absorption as a regular workman of the Respondent/Management, Air India at Airport, Chennai It is the contention of the Petitioner that she was employed continuously from September, 1994 to April, 1995 and again from May, 1995 to November, 1995 at the monthly salary of Rs 550/- and that she was terminated from service in the year 1995 without any notice or intimation so as to deny her permanency It is also her further contention that a sum of Rs 60/- towards provident fund and Rs. 9/- towards ESI have been deducted in her salary by the Respondent/

Management and as such she was a permanent worker. She would further contend that she was not permitted to work further, even though the work was available for her continuous employment and that such termination of the Petitioner/Workman is within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947 and prior to termination of the services of the Petitioner, the mandatory conditions precedent laid under section 25N and 25F of the Industrial Disputes Act have not been followed by the Respondent/Management. She has further contended that the Petitioner has been issued with temporary pass by the Government of India, Bureau of Civil Aviation Security. The learned counsel for the Petitioner has also advanced her argument as such and would contend that having terminated the Petitioner from service without adopting the procedure under Section 25F of issuing notice and compensation amounts to violation of provisions of Industrial Disputes Act, 1947 by the Respondent/Management and since the Petitioner has worked continuously for nearly 250 days, she must be confirmed with permanent status and should have been absorbed as a permanent employee of the Respondent/Management by reinstatement in service, since the termination of service of the Petitioner amounts to retrenchment under Section 2(oo) of the Industrial Disputes Act.

6 The learned counsel for the Respondent would contend that the Respondent/Management have never engaged the Petitioner for doing the cleaning service in the Chennai Airport and if at all, she has been engaged, she would have been engaged only through contractor with whom the Respondent/Management had contractual agreement for providing manpower for doing such work in the Chennai Airport. Therefore, there is no employer and employee relationship between the Respondent/Management and the petitioner at any point of time. In the Claim Statement itself, no details have been given with regard to the alleged appointment as well as termination of service of the Petitioner by the Respondent/Management. Further the Petitioner has not proved that she has worked for 240 days continuously to claim the benefit under Section 25F of the Industrial Disputes Act. Since there is no relationship between the Respondent and the Petitioner as employer and employee or master and servant, and the Respondent has neither appointed nor terminated the Petitioner from service, the question of retrenchment under Section 2(oo) of the Industrial Disputes Act does not arise. So, the non-issue of notice or non-payment of compensation does not arise in this case to attract the provisions of Section 25F of the Industrial Disputes Act, 1947. Only when the employer terminates the services of an employee, the retrenchment under Section 2(oo) will arise. It is not applicable to the present facts of this case. Further, the Petitioner has raised this dispute after a long time of six years and no reason has also been given for this undue delay. In the Claim Statement also, the delay has not been explained. He would further contend that the petitioner has not let in any oral or documentary evidence to substantiate her stand of employment continuously for a period of more than 240 days in a year immediately preceded to the date of termination to claim the benefit under Section 25F of the Industrial Disputes Act. The learned counsel for the Respondent has relied upon the decision of the Supreme Court in a case reported as 2002 1 LJ SC 457 between ASSISTANT EXECUTIVE ENGINEER, KARNATAKA and SHIVALINGA to put forth his contention that long delay in raising the industrial dispute would be fatal to the case and on that basis, it is not possible for this Tribunal to

adjudicate the dispute appropriately and the situation of that nature would render the claim to have become stale. He would further rely upon another decision of the Supreme Court in a case reported as 2002 FJR 100 397 RANGE FOREST OFFICER Vs S T HANDIMANI, in support of his contention that the workman claiming to have worked for 240 days, the onus on the workman to prove the claim by proof of receipt of salary or wages for 240 days or record of appointment or engagement for the period. It is his further argument that on the basis of these decisions, the Petitioner has failed to prove his claim to have reinstatement in service by the Respondent/Management in their establishment and hence, her claim has to be dismissed with cost.

7 Though the Petitioner had made a claim for reinstatement in service by the Respondent/Management in their establishment, as stated by the learned counsel for the Respondent/Management in his argument, no particulars have been given in the Claim Statement and no oral and documentary evidence has let in before this Tribunal to show that the Petitioner has been employed on a particular date by the Respondent/Management for doing the work of cleaning in the Chennai Airport and in the premises of II Party/Management Air India, Chennai. No plea has been made in the Claim Statement as to how the alleged termination of the Petitioner from service and on what date it took place. It is merely stated in the Claim Statement that the Petitioner was employed as a cleaner by the Respondent/Management at the Madras Airport at Chennai from September 1994 to April 1995 and again from May, 1995 to November, 1995. It is not her case that the Respondent/Management had ever issued any order of appointment for the same and also when her services were alleged to have been terminated by the Respondent/Management there being an order of termination from service has been issued to her by the Respondent/Management. For the averment of the Petitioner in her Claim Statement that she was paid a sum of Rs. 550 as monthly salary and a sum of Rs. 60 for provident fund and Rs. 9 for ESI have been deducted by the Respondent/Management, no evidence worth considering either oral or documentary has been placed before this Hon'ble Tribunal. Only on the basis of such particulars mentioned in the Claim Statement, the Petitioner has claimed to be a permanent worker of the Respondent/Management. On the other hand, it is the contention of the Respondent/Management as well as the argument advanced by the learned counsel for the Respondent/Management that the Petitioner was never engaged/employed by the Respondent/Management in the Chennai Airport under the control of Air India and its premises for doing the cleaning work and there was no employer and employee relationship between the Respondent and the Petitioner at any point of time and it is for the Petitioner to prove her case with acceptable evidence. In spite of such contention of the Respondent/Management in their Counter Statement, the Petitioner has not chosen to let in any oral or documentary evidence in this case to establish her stand as an employee employed by the Respondent/Management as a cleaner.

8 It is the definite contention of the Respondent/Management in their Counter Statement that they used to engage labourers for doing the cleaning work in their premises at the Chennai Airport only through contractors who entered into contract with them for supplying manpower for such work and those casual employees

engaged by the contractor used to be paid salaries by the contractors themselves and the Respondent/Management have no direct control over such people employed by the contractor and as and when there is requirement for such labour, their contractor used to provide manpower for doing that work. This has not been denied by petitioner by filing any reply statement to the Counter Statement. The learned counsel for the Respondent has cited a case decided by the Supreme Court reported as 2002 FJR Vol 100,397 RANGE FOREST OFFICER Vs S.T HADIMANI in support of his contention that the Petitioner/Workman has to prove with acceptable evidence that she had worked for more than 240 days in the year preceding her termination and it is the definite contention of the Respondent/Management that there is no relationship between the management and the Petitioner as employer and employee. In the above cited case the Hon'ble Supreme Court has held that 'since the claim of the Respondent that he worked for 240 days was denied by the Management, it was for the Respondent to lead evidence to show that he had in fact, worked for 240 days. In the absence of proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period, the mere filing of affidavit was not sufficient evidence for the Labour Court to come to the conclusion that the Respondent had in fact worked for 240 days'. This decision of the Hon'ble Supreme Court is squarely applicable to the facts of this present case. Further in this case, as it is filed in that case in dispute, not even an affidavit has been filed by the Petitioner to show that she has worked for 240 days continuously immediately preceding to the alleged termination of service. No allegation to that effect also has been made in the Claim Statement. When especially the Respondent is disputed the relationship between them and the Petitioner as employer and employee and have stated that if at all the petitioner has been employed for cleaning work in the Respondent premises, it would have been only through contractors and the contractor only could have been paid her wages and there is no question of violation of Section 25F of the Industrial Disputes Act, it is for the Petitioner/Workman to prove with acceptable legal evidence that she was employed continuously by the Respondent/Management for more than 240 days during the one year period immediately preceding to the date of alleged retrenchment from service. As already stated there is no plea available to that extent in the Claim Statement and no evidence by way of oral or documentary to show as a proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period. It is also not the contention of the Petitioner/Workman that there are enough documentary evidence available with the Respondent/Management to show her direct employment under the Respondent/Management for the alleged period to conclude that she was a permanent worker of the Respondent/Management. Even for her averment in the claim petition, that she was paid a sum of Rs 550 as monthly salary and a sum of Rs 60 towards provident fund and Rs 9 towards ESI have been deducted from her salary by the Respondent/Management, no evidence worth credit has been produced in this case. Under such circumstances, as it is contended by the learned counsel for the Respondent, the Petitioner has been employed only as the workman engaged by the contractor who had entered into a contract with the Respondent/Management for providing manpower for such work that was attended to by the Petitioner in the Respondent/Management premises as and when required by them. Therefore as rightly contended by the learned

counsel for the Respondent, there is nothing to reveal that there was any relationship between the Respondent/Management and the Petitioner as master and servant at any point of time. The specific averments in the Counter Statement that the Petitioner would have been employed by the contractors and such employees of the contractors were all working under the personal control and supervision of the supervisors employed by the said contractors and that the engagement of the contract labour was handled completely, independently by contractors and the Respondent/Management had no say in their employment has not been denied or disputed by the Petitioner/Workman from this, it can be said the conditions of service for the contract labour was determined and fixed only by the said contractor and the said contractor only vested with disciplinary control over the contract labourers. So, those contractors only are the employers of the said labourers engaged by them. Under such circumstances, the question of application of provisions of Industrial Disputes Act or any other enactments do not arise, as it is rightly contended by the Respondent/Management in their Counter Statement. So it can be said that the Respondent/Management is no way connected with the alleged termination of services of contractors' workmen. In view of these state of affairs, it cannot be said that the alleged action of the Respondent/Management in terminating the services of the Petitioner is violative of Sections 25N and 25F of the Industrial Disputes Act. It is the further contention of the Petitioner/Workman that she was issued with temporary pass by the Government of India, Bureau of Civil Aviation Security, since she happens to be a workman employed by the Respondent/Management in their establishment. For this, the Respondent has stated in their Counter Statement that since the airport is declared as restricted area and it is prerequisite to possess passes issued by Bureau of Civil Aviation Security, the Respondent/Management might have facilitated the issuance of Bureau of Civil Aviation Security passes to the contract workmen for their working in Air India premises at airport as and when necessary and the said processing of passes for the Petitioner by the Respondent/Management to enable her to work in the Air India premises at airport will not entail the Petitioner to claim the status of a permanent worker under the Respondent/Management. This contention of the Respondent/Management is quite acceptable.

9 The Petitioner is said to have been non-employed subsequent to November, 1995. It is not averred in the Claim Statement of the Petitioner as to when she has raised the Industrial Dispute under Section 2A of the Industrial Dispute Act, 1947 before the Assistant Labour Commissioner (Central) Chennai. This matter has been referred by the Government of India as an industrial dispute for adjudication by this Tribunal by an order dated 16-3-2001. From this, it is seen that the Petitioner has moved the authority after a long delay of nearly six years. The learned counsel for the Respondent had argued that the Petitioner has chosen to raise this industrial dispute after a delay of almost six years and on that ground of delay and laches the dispute is liable to be dismissed in limine. For this contention, he has cited a case decided by the Supreme Court of India reported as 2002 1 LLJ pg 457 between Assistant Executive Engineer Karnataka and Sivalinga. In this case the Hon'ble Supreme Court was pleased to hold that *where there was a serious dispute or doubt with regard to relationship employer and employee between*

the parties to the dispute, records of employer being relevant, the long delay would come in the way of maintenance of the same. In such circumstances, to make them available to Labour Court or Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale and such a long delay would be fatal to the case. This decision of the Supreme Court is squarely applicable to this case also. Under such circumstances, in view of the above findings, it can be held that the demand of the workman Ms. Susila that she may be reinstated in service and absorbed as a regular workman of Air India is unjustified. Hence, the concerned workman is not entitled to any relief. Thus, the point is answered accordingly.

10 In the result, an Award is passed holding that the Petitioner/Workman is not entitled for any relief. No Cost.

(Dictated to the Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 27th March, 2002.)

K. KARTHIKEYAN, Presiding Officer

Witnesses Examined

On either side None

DOCUMENTS MARKED

On either side Nil

नई दिल्ली, 3 अप्रैल, 2002

का.आ. 1456.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एअर इंडिया के प्रबंधन के संबद्ध नियोजकों और उनके कर्मचारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पंचाट (संदर्भ संख्या 561/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-4-02 को प्राप्त हुआ था।

[सं. एल-11012/165/2000-आई.आर. (सी-1)]

एस.एस. गुप्ता, अवर सचिव

New Delhi, the 3rd April, 2002

S.O. 1456.—In pursuance of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 561/2001) of the Central Government Industrial Tribunal Chennai as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of Air India and their workman, which was received by the Central Government on 02-04-2002.

[No L-11012/165/2000-IR(C-1)]

S. S. GUPTA, Under Secy

ANNEXURE

BEFORE THE CENTRAL GOVT INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 27th March, 2002

PRESENT

K. Karthikeyan,
Presiding Officer

INDUSTRIAL DISPUTE No. 561/2001

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between Ms. Jeyamma and the Management of Air India Chennai)

BETWEEN

Ms. Jeyamma I Party/Workman

AND

The Southern Regional II Party Management
Manager, Air India, Chennai

APPEARANCE

For the Workman M/s D. Dhanam &
D. R. A. Vedhanayagam
Advocates

For the Management M/s Ramasubramaniam
& Associates
Advocates

The Govt. of India, Ministry of Labour, in exercise of powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No. L-11012/165/2000-IR (C-1), dated 16-03-2001.

On receipt of the order of reference from the Government of India, Ministry of Labour, this case has been taken on file as I.D. No. 561/2001 and notices were sent to both the parties to the dispute, with a direction to appear before this Tribunal on 19-04-2001 to prosecute this case further. Accordingly, both the parties were appeared along with their respective counsels and have prosecuted this case by filing their Claim Statement and Counter Statement respectively.

3 When the matter came up before me for final hearing on 06-03-2002, upon perusing the Claim Statement, Counter Statement, the other material papers on record, and after hearing the arguments advanced by the learned counsel on either side, this matter having stood over till this date for consideration, this Tribunal has passed the following —

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows —

“Whether demand of workman Ms. Jeyamma that she may be reinstated in service and absorbed as regular workman of Air India is justified? If so, to what relief is the workman entitled and from what date?”

2 The averments in the Claim Statement of the I Party/Workman Ms. Jeyamma are briefly as follows —

The Petitioner was employed as a cleaner by the II Party/Management of Air India at the Madras Airport at Chennai. She was employed continuously from September 1994 to April, 1995 and again from May, 1995 to November, 1995. She was paid a sum of Rs. 550/- as monthly salary. A sum of Rs. 60/- for provident fund and Rs. 9/- for ESI have been deducted in her salary by the II Party/Management.

as such she was a permanent worker. Petitioner having been treated as employee of the II Party/Management, was terminated from service in the year 1995 without any notice or intimation, so as to deny her permanency and to induct in her place fresh employee. She was not permitted to work further even though work was available for her continuous employment. It is with a view to deny the benefits that would accrue to her, the II Party/Management, with a view to avoid giving the benefits of continuous employment, wantonly terminated the Petitioner from service in the year 1995. In order to prevent continuous service and claim for permanency the II Party/Management restored to the unfair labour practice by terminating her from service without giving her notice under law to evade the protection afforded by the Industrial Disputes Act and Tamil Nadu Industrial Establishment (Conferment of Permanent Status of Workman) Act. Such termination of the Petitioner/Workman is retrenchment within the meaning of Section 2 (oo) of Industrial Disputes Act, 1947. Prior to the termination of the service of the Petitioner, the mandatory condition precedent laid under section 25N and 25F of the Industrial Disputes Act, 1947 have not been followed by the II Party/Management. Cleaning the Airport is a control industry for which the appropriate Government is the Central Govt. and therefore, the Petitioner raised an industrial dispute under section 2A of the Act before the Assistant Labour Commissioner (Central), Chennai. On failure of conciliation, he referred this dispute and on submission of his report to the Government, the Govt. was pleased to refer this dispute for adjudication of this Hon'ble Tribunal. The Petitioner was issued with a temporary pass by the Government of India, Bureau of Civil Aviation Security. The termination of the Petitioner is unsustainable in law. The impugned termination of the Petitioner is arbitrary, illegal and capricious. The action of the II Party/Management in terminating the services of the Petitioner amounts to retrenchment within the meaning of Section 2 (oo) of the Industrial Disputes Act, 1947. The work done by the Petitioner was permanent and perennial in nature. To deny the benefit of permanency to the Petitioner, the II Party/Management employed new workmen for short period and then sending them out of service and again engaging a batch of workers for the same work, which was done by the workman like the Petitioner earlier. This device was adopted by the II Party/Management and the same amounts to unfair labour practice. The above action of the II Party/Management is a deliberate device adopted by them to evade the protection afforded by the Industrial Disputes Act, 1947 and Tamil Nadu Industrial establishment (Conferment of Permanent Status to Workman) Act. The action of the II Party/Management in terminating the services of the Petitioner, though she had been employed from September, 1994 to April, 1995 is violative of Section 25N and 25F of the Industrial Disputes Act, 1947. The II Party/Management is not justified in refusing to confer permanency on the Petitioner, even though the work done by the Petitioner was permanent and perennial in nature. The Petitioner is a widow, who has a large family to support and due to the action of the II Party/Management in terminating the services of the Petitioner, her family has been facing severe economic and mental hardship. At the time of termination of her service, the Petitioner was paid Rs. 550/- per month as wages. The permanent employees of the II Party/Management in the last grade were paid Rs. 2350/- per month. Therefore, it is prayed that this Hon'ble Tribunal may be pleased to direct the II Party/Management to reinstate the Petitioner in service and regularise and

absorb here service in the II Party/Management and pay all her back wages and monetary benefits as was paid to the permanent workmen with all other consequent benefits including seniority etc.

3. the averments in the Counter Statement filed by the II Party/Management Air India, Chennai (hereinafter refers to as Respondent) are briefly as follows:—

The Respondent denies all the allegations and averments in the Claim Statement filed by the Petitioner except that those are specifically admitted herein. The dispute raised by the Petitioner against this Respondent is not maintainable, since there was no employer-employee relationship between the Respondent and the Petitioner at any point of time. On this ground, the dispute is liable to be dismissed in limine. The Petitioner has raised this dispute after a delay of almost six years and this dispute is liable to be dismissed on the ground of delay and laches also. The Respondent is a company registered under the provisions of the Companies Act, 1956. The Respondent/Management has got a number of permanent workers for attending to normal operations. The Respondent/Management according to their requirements engaged contractors for cleaning the Air India premises at Chennai. During the period mentioned by the Petitioner, the Respondent had arrangements with the contractors for carrying out the cleaning of their premises. The then contractors engaged their own men/women and supplies labourers to do the work in the offices of the Respondent/Management at Chennai. As per the said agreement, the Respondent/Management did not have any control or supervision over the workers engaged by the contractors. The contractors undertook to supply labour for attending to do the cleaning job. The Respondent/Management at no point of time engaged the Petitioner. Since the Respondent/Management had arrangements with the contractors, as per the requirement, the Respondent/Management used to inform the contractors to supply manpower. The Respondent/Management for engaging the contractors had taken out registration under the Contract Labour (Abolition and Regulation) Act from the Labour Department, Government of India. Since the Respondent has taken out registration for engaging contract labour through the contractors, the contract between the Respondent and the contractors were valid one. It is denied that the Respondent had ever engaged the Petitioner to do the cleaning job and puts the Petitioner to strict proof of the the same Since the Petitioner claims that she had worked during the period mentioned in the petition, she might have worked with the contractors, who had been entrusted with the job of housekeeping of the Respondent premises during that period. However, there was no employer and employee relationship between the Respondent and the Petitioner. A perusal of the documents available with the Respondent/Management does not indicate that the Petitioner was at any time an employee of the Respondent/Management. The wages were paid to the contract labourers only by their employers i.e. the respective contractors. In the circumstances, the records of the Respondent do not reveal any wages paid or any contributions made by the name of the Petitioner. The records of the Respondent did not reveal that there was at any time any master and servant relationship between the Petitioner herein and the management. The Respondent never employed the Petitioner and hence the question of alleged termination does not arise. The employees of the contractors were all working under the personal control and supervision of the

supervisors employed by the said contractors. The engagement of the contract labour was handled completely, independently by contractors and the Respondent/Management had no say in their employment. The conditions of service of the contract labour was determined and fixed only by the said contractors. Disciplinary control over the contract labourers also vested only with the contractors concerned. Thus, in all respects, the contractors were the employers of the said labourers engaged by them. Hence, the question of application of provisions of Industrial Disputes Act, 1947 or any other enactments do not arise. If at all any person is aggrieved, he/she has to take up the matter only with the said contractors. The respondent is in no way connected with the alleged termination of services of contractor's workmen. As regards the petition filed by the Petitioner before the labour Commissioner is concerned, this Respondent filed the counter in the said petition, explaining the above facts. The conciliation ended in a failure and subsequently, the same was referred to this Hon'ble Tribunal for adjudication. As regards the averments in the Claim Statement of the Petitioner regarding issue of passed by Bureau of Civil Aviation Security to the Petitioner is concerned, since the Airport is declared as a restricted area and it is a pre-requisite to process passes issued by the Bureau of Civil Aviation Security, it is possible for Air India as a principal employer might have facilitated the issuance of Bureau of Civil Aviation Security passes to the contract workmen for their working in Air India premises at Airport as and when necessary. The Respondent neither appointed nor terminated the Petitioner as alleged. Hence, the question of retrenchment within the meaning of Section 2(oo) or violation of Section 25N or 25F of the Industrial Disputes Act, 1947 does not arise at all. It is denied that the work alleged to have been done by the Petitioner was permanent and perennial in nature. The allegations that the Respondent employs new workers for a short period and again engaging fresh workers for the same work in order to deny the benefit of permanency are denied as false and baseless. The respondent puts the Petitioner to strict proof of the same. The Respondent did not have any direct relationship with the contract labourers. The contract labourers were engaged through the contractors depending upon the requirement. Hence, violation of provisions of Industrial Disputes Act, 1947 or any other enactment does not arise at all. The averments contained in para 9 of the claim petition are made just to gain sympathy of this Hon'ble Court. The casuals directly engaged by the Respondent were paid a sum of Rs 61/- per day, whereas the Petitioner claimed to have received monthly wages of Rs 550/- This itself, clearly establishes that her claim of employment with the Respondent is baseless. In the circumstances it is prayed that this Hon'ble Court may be pleased to dismiss the disputes as not maintainable.

4 When the matter was taken up finally for enquiry, no one has been examined as a witness on either side. No documents have been filed on either side as exhibits. The learned counsel on either side have advanced their arguments.

5 The point for my consideration is—
“Whether demand of the workman Ms Jeyamma that she may be reinstated in service and absorbed as regular workman of Air India is justified? If so, to what relief is the workman entitled and from what date?”

Point —

This dispute referred for adjudication is in respect of demand of the Petitioner Ms Jeyamma for reinstatement in service and absorption as a regular workman of the Respondent/Management, Air India at Airport, Chennai. It is the contention of the Petitioner that she was employed continuously from September, 1994 to April, 1995 and again from May, 1995 to November, 1995 at the monthly salary of Rs 550/- and that she was terminated from service in the year 1995 without any notice or intimation so as to deny her permanency. It is also her further contention that a sum of Rs 60/- towards provident fund and Rs 9/- towards ESI have been deducted in her salary by the Respondent/Management and as such she was a permanent worker. She would further contend that she was not permitted to work further, even though the work was available for her continuous employment and that such termination of the Petitioner/Workman is within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947 and prior to termination of the services of the Petitioner, the mandatory conditions precedent laid under section 25N and 25F of the Industrial Disputes Act have not been followed by the Respondent/Management. She has further contended that the Petitioner has been issued with temporary pass by the Government of India Bureau of Civil Aviation Security. The learned counsel for the Petitioner has also advanced her argument as such and would contend that having termination of the Petitioner from service without adopting the procedure under section 25F of issuing notice and compensation amounts to violation of provisions of Industrial Disputes Act, 1947 by the Respondents/Management and since the Petitioner has worked continuously for nearly 250 days, she must be confirmed with permanent status and should have been absorbed as a permanent employee of the Respondent/Management by reinstatement in service, since the termination of service of the Petitioner amounts to retrenchment under section 2(oo) of Industrial Disputes Act.

6 The learned counsel for the Respondent would contend that the Respondent/Management have never engaged the Petitioner for doing the clearing service in the Chennai Airport and if at all, she has been engaged, she would have been engaged only through contractor with whom the Respondent/Management had contractual agreement for providing manpower for doing such work in the Chennai Airport. Therefore, there is no employer and employee relationship between the Respondent/Management and the Petitioner at any point of time. In the Claim Statement itself, no details have been given with regard to the alleged appointment as well as termination of service of the Petitioner by the Respondent/Management. Further the Petitioner has not proved that she has worked for 240 days continuously to claim the benefit under section 25F of the Industrial Disputes Act. Since there is no relationship between the Respondent and the Petitioner as employer and employee or master and servant, and the Respondent has neither appointed nor terminated the Petitioner from service, the question of retrenchment under section 2(oo) of the Industrial Disputes Act does not arise. So, the non-issue of notice or non-payment of compensation does not arise in this case to attract the provisions of Section 25F of the Industrial Disputes Act, 1947. Only when the employer terminates the services of an employee, the retrenchment under section 2(oo) will arise. It is not applicable to the present facts of this case. Further, the Petitioner has raised this dispute after a long

time of six years and no reason has also given for this undue delay. In the Claim Statement also, the delay has not been explained. He would further contend that the Petitioner has not let in any oral or documentary evidence to substantiate her stand of employment continuously for a period of more than 240 days in a year immediately preceded to the date of termination to claim the benefit under section 25F of the Industrial Disputes Act. The learned counsel for the Respondent has relied upon the decision of the Supreme Court in a case reported as 2002 1 LLJ SC 457 between ASSISTANT EXECUTIVE ENGINEER, KARNATAKA and SHIVALINGA to put forth his contention that long delay in raising the industrial dispute would be fatal to the case and on that basis, it is not possible for this Tribunal to adjudicate the dispute appropriately and the situation of that nature would render the claim to have become stale. He would further rely upon another decision of the Supreme Court in a case reported as 2002 FJR 100 397 RANGE FOREST OFFICER Vs S T HADIMANI, in support of his contention that the workman claiming to have worked for 240 days, the onus on the workman to prove the claim by proof of receipt of salary or wages for 240 days or record of appointment or engagement for the period. It is his further argument that on the basis of these decisions, the Petitioner has failed to prove his claim to have reinstatement in service by the Respondent/Management in their establishment and hence, her claim has to be dismissed with cost.

7 Though the Petitioner had made a claim for reinstatement in service by the Respondent/Management in their establishment, as stated by the learned counsel for the Respondent/Management in his argument, no particulars has been given in the Claim Statement and no oral and documentary evidence has let in before this Tribunal to show that the Petitioner has been employed on a particular date by the Respondent/Management for doing the work of cleaning in the Chennai Airport and in the premises of II Party Respondent 'Management Air India Chennai'. No plea has been made in the Claim Statement as to how the alleged termination of the Petitioner from service and on what date it took place. It is merely stated in the Claim Statement that the Petitioner was employed as a cleaner by the Respondent/Management at the Madras Airport at Chennai from 1994 September to 1995 April and again from May, 1995 to November, 1995. It is not her case that the Respondent/Management had ever issued any order of appointment for the same and also when her services were alleged to have been terminated by the Respondent/Management there being an order of termination from service has been issued to her by the Respondent/Management. For the averment of the Petitioner in her Claim Statement that she was paid a sum of Rs. 550/- as monthly salary and a sum of Rs. 60/- for provident fund and Rs. 9/- for ESI have been deducted by the Respondent/Management, no evidence worth considering either oral or documentary has been placed before this Hon'ble Tribunal. Only on the basis of such particulars mentioned in the Claim Statement, the Petitioner has claim to be a permanent worker of the Respondent/Management. On the other hand it is the contention of the Respondent/Management as well as the argument advanced by the learned counsel for the Respondent/Management that the Petitioner was never engaged/employed by the Respondent/Management in the Chennai Airport under the control of Air India and its premises for doing the cleaning work and there was no employer and employee relationship between the respondent and the Petitioner at any point of time and it is

for the Petitioner to prove her case with acceptable evidence. In spite of such contention of the Respondent/Management in their Counter Statement, the Petitioner has been not chosen to let in any oral or documentary evidence in this case to establish her stand as an employee employed by the Respondent/Management as a cleaner.

8 It is the definite contention of the Respondent/Management in their Counter Statement that they used to engage labourers for doing the cleaning work in their premises at the Chennai Airport only through contractors who entered into contract with them for supplying manpower for such work and those casual employees engaged by the contractor used to be paid salaries by the contractors themselves and the Respondent/Management have no direct control over such people employed by the contractor and as and when there is requirement for such labour, their contractor used to provide manpower for doing that work. This has not been denied by petitioner by filing any reply statement to the Counter Statement. The learned counsel for the Respondent has cited a case decided by the Supreme Court reported as 2002 FJR Vol. 100 397 Range FOREST OFFICER, Vs S T HADIMANI in support of his contention that the Petitioner/Workman has to prove with acceptable evidence that she had worked for more than 240 days in 200 year preceding her termination and it is the definite contention of the Respondent/Management that there is no relationship between the management and the Petitioner as employer and employee. In the above cited case the Hon'ble Supreme Court has held that 'since the claim of the Respondent that he worked for 240 days was denied by the Management, it was for the Respondent to lead evidence to show that he had in fact, worked for 240 days. In the absence of proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period, the mere filing of affidavit was not sufficient evidence for the Labour Court to come to the conclusion that the Respondent had in fact worked for 240 days'. This decision of the Hon'ble Supreme Court is squarely applicable to the facts of this present case. Further in this case, as it is filed in that case in dispute, not even an affidavit has been filed by the Petitioner to show that she has worked for 240 days continuously immediately preceding to the alleged termination of service. No allegation to that effect also has been made in the Claim Statement. When especially the Respondent is disputed the relationship between them and the Petitioner as employer and employee and have stated that if at all the petitioner has been employed for cleaning work in the Respondent premises, it would have been only through contractors and the contractors only could have been paid her wages and there is no question of violation of Section 25F of the Industrial Disputes Act. It is for the Petitioner/Workman to prove with acceptable legal evidence that she was employed continuously by the Respondent/Management for more than 240 days during the one year period immediately preceding to the date of alleged retrenchment from service. As already stated there is no plea available to that extent in the Claim Statement and no evidence by way of oral or documentary to show as proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period. It is also not the contention of the Petitioner/Workman that there are enough documentary evidence available with the Respondent/Management to show her direct employment under the Respondent/Management for the alleged period to conclude that she was a permanent worker of the

Respondent/Management Even for her averment in the claim petition that she was paid a sum of Rs 550/- as monthly salary and a sum of Rs 60/- towards provident fund and Rs 9/- towards ESI have been deducted from her salary by the Respondent/Management no evidence worth credit have been produced in this case. Under such circumstances as it is contended by the learned counsel for the respondent the petitioner has been employed only as the workman engaged by the contractor who had entered into a contract with the Respondent/Management for providing manpower for such work that was attended to by the petitioner in the Respondent/Management premises as and when required by them. Therefore as rightly contended by the learned counsel for the Respondent, there is nothing to reveal that there was any relationship between the Respondent/Management and the petitioner as master and servant at any point of time. The specific averments in the Counter Statement that the Petitioner would have been employed by the contractors and such employees of the contractors were all working under the personal controls and supervision of the supervisors employed by the said contractors and that the engagement of the contract labour was handled completely independently by contractors and the Respondent/Management had no say in their employment has not been denied or disputed by the Petitioner/Workman. From this it can be said the conditions of service for the contract labour was determined and fixed only by the said contractor and the said contractor only vested with disciplinary control over the contract labourers. So, those contractors only are the employers of the said labourers engaged by them. Under such circumstances, the question of application of provisions of Industrial Disputes Act or any other enactments do not arise, as it is rightly contended by the Respondent/Management in their Counter Statement. So, it can be said that the Respondent/Management is no way connected with the alleged termination of services of contractors workman. In view of these state of affairs it cannot be said that the alleged action of the Respondent/Management in terminating the services of the Petitioner is violative of Section 25N and 25F of the Industrial Disputes Act. It is the further contention of the Petitioner/Workman that she was issued with temporary pass by the Government of India Bureau of Civil Aviation Security since she happens to be a workman employed by the Respondent/Management in their establishment. For this the Respondent has stated in their Counter Statement that since the airport is declared as restricted area and it is prerequisite to possess passes issued by Bureau of Civil Aviation Security the Respondent/Management might have facilitated the issuance of Bureau of Civil Aviation Security passes to the contract workman for their working in Air India premises at airport as and when necessary and the said processing of passes for the Petitioner by the Respondent/Management to enable her to work in the Air India premises at airport will not entail the Petitioner to claim the status of a permanent worker under the Respondent/Management. This contention of the Respondent/Management is quite acceptable.

9 The petitioner is said to have been non-employed subsequent to November 1995. It is not averred in the Claim Statement of the Petitioner as to when she has raised the Industrial Dispute under Section 2A of the Industrial Disputes Act 1947 before the Assistant Labour Commissioner (Central) Chennai. This matter has been referred by the Government of India as an Industrial dispute

for adjudication by this Tribunal by an order dated 16-3-2001. From this, it is seen that the Petitioner has moved the authority after a long delay of nearly six years. The learned counsel for the Respondent had argued that the Petitioner has chosen to raise this industrial dispute after a delay of almost six years and on that ground of delay and laches the dispute is liable to be dismissed in limine. For this contention he has cited a case decided by the Supreme Court of India reported as 2002 1 LLJ pg 457 between Assistant Executive Engineer Karnataka and Sivalinga. In that case the hon ble Supreme Court was pleased to hold that where there was a serious dispute or doubt with regard to relationship of employer and employee between the parties to the dispute records of employer being relevant the long delay would come in the way of maintenance of the same. In such circumstances to make them available to Labour Court or Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale and such a long delay would be fatal to the case. This decision of the Supreme Court is squarely applicable to this case also. Under such circumstances in view of the above findings it can be held that the demand of the workman Ms Jeyamma that she may be reinstated in service and absorbed as a regular workman of Air India is unjustified. Hence, the concerned workman is not entitled to any relief. Thus the point is answered accordingly.

10 In the result an Award is passed holding that the Petitioner/Workman is not entitled for any relief. No Cost.

(Dictated to the Stenographer transcribed and typed by him corrected and pronounced by me in the open court on this day the 27th March 2002.)

K KARTHIKEYAN Presiding Officer

Witnesses Examined

On either side None

Documents Marked

on either side NIL

नई दिल्ली, 3 अप्रैल, 2002

का.आ.1457 — औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एयर इंडिया के प्रबंधन के सदस्य नियोजकों और उनके कर्मचारियों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, चेन्नई के पचाट (संदर्भ संख्या 562/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 2-4-02 को प्राप्त हुआ था।

[स एल/11012/166/2000 आई आर (सी-1)]

एस एस गुप्ता, अवर सचिव

New Delhi the 4th April 2002

S.O. 1457.—In pursuance of Section 17 of the Industrial Disputes Act 1947 (14 of 1947) the Central Government hereby publishes the Award (Ref No 562/2001) of the Central Government Industrial Tribunal Chennai now as shown in the Annexure in the industrial dispute between the employers in relation to the management of Air India and their workman which was received by the Central Government on 2-4-02.

[No L-11012/166/2000-IR(C-I)]

S S GUPTA Under Secy

ANNEXURE
BEFORE THE CENTRAL GOVT. INDUSTRIAL
TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 27th March, 2002

PRESENT :

K. Karthikeyan,

Presiding Officer

INDUSTRIAL DISPUTE NO. 562/2001

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), between Ms. Parvathy and the Management of Air India, Chennai.)

BETWEEN

Ms. Parvathy : I Party/Workman

AND

The Southern Regional : II Party/Management
 Manager, Air India, Chennai

APPEARANCES :

For the Workman : M/s. D. Dhanam and
 D.R.A. Vedhanayagam
 Advocates

For the Management : M/s. Ramasubramaniam
 & Associates,
 Advocates

The Govt. of India, Ministry of Labour, in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Dispute Act, 1947 (14 of 1947), have referred the concerned Industrial Dispute for adjudication vide Order No. L-11012/166/2000-IR (C-I), dated 16-03-2001.

On receipt of the order of reference from the Government of India, Ministry of Labour, this case has been taken on file as I.D. No. 562/2001 and notices were sent to both the parties to the dispute, with a direction to appear before this Tribunal on 19-04-2001 to prosecute this case further. Accordingly, both the parties were appeared along with their respective counsels and have prosecuted this case by filing their Claim Statement and Counter Statement respectively.

When the matter came up before me for final hearing on 06-03-2002, upon perusing the Claim Statement, Counter Statement, the other material papers on record, and after hearing the arguments advanced by the learned counsel on either side, this matter having stood over till this date for consideration, this Tribunal has passed the following :—

AWARD

The Industrial Dispute referred to in the above order of reference by the Central Govt. for adjudication by this Tribunal is as follows :—

“Whether demand of workman Ms. Parvathy that she may be reinstated in service and absorbed as regular workman of Air India is justified? If so, to what relief is the workman entitled and from what date?”

2. The averments in the Claim Statement of the I Party/Workman Ms. Parvathy are briefly as follows :—

The Petitioner was employed as a cleaner by the II Party/Management of Air India at the Madras Airport at Chennai. She was employed continuously for three years i.e. 1993 to 1995. She was paid a sum of Rs. 550/- as monthly salary. A sum of Rs. 60/- for provident fund and Rs. 9/- for ESI have been deducted in her salary by the II Party/Management, as such she was a permanent worker. Petitioner having been treated as employee of the II Party/Management, was terminated from service in the year 1995 without any notice or intimation, so as to deny her permanency and to induct in her place fresh employees. After completion of more than 240 days on two continuous calendar. She was not permitted to work further even though work was available for her continuous employment. It is with a view to deny the benefits that would accrue to her, the II Party/Management, with a view to avoid giving the benefits of continuous employment, want only terminated the Petitioner from service in the year 1995. In order to prevent continuous service and claim for permanency the II Party/Management restored to the unfair labour practice by terminating her from service without giving her notice under law to evade the protection afforded by the Industrial Disputes Act and Tamil Nadu Industrial Establishment (Conferment of Permanent Status of Workman) Act. Such termination of the Petitioner/Workman is retrenchment within the meaning of Section 2 (oo) of Industrial Disputes Act, 1947. Prior to the termination of the service of the Petitioner, the mandatory conditions precedent laid under Section 25N and 25F of the Industrial Disputes Act, 1947 have not been followed by the II Party/Management. Cleaning the Airport is a control industry for which the appropriate Government is the Central Govt. and therefore, the Petitioner raised an industrial dispute under Section 2A of the Act before the Assistant Labour Commissioner (Central), Chennai. On failure of conciliation, he referred this dispute and on submission of his report to the Government, the Govt. was pleased to refer this dispute for adjudication of this Hon'ble Tribunal. The Petitioner was issued with a temporary pass by the Government of India, Bureau of Civil Aviation Security. The termination of the Petitioner is unsustainable in law. The impugned termination of the Petitioner is arbitrary, illegal and capricious. The action of the II Party/Management in terminating the services of the Petitioner amounts to retrenchment within the meaning of Section 2 (oo) of the Industrial Disputes Act, 1947. The work done by the Petitioner was permanent and perennial in nature. To deny the benefit of permanency to the Petitioner, the II Party/Management employed new workmen for short period and then sending them out of service and again engaging a batch of workers for the same work, which was done by the workman like to Petitioner earlier. This device was adopted by the II Party/Management and the same amounts to unfair labour practice. The above action of the II Party/Management is a deliberate device adopted by them to evade the protection afforded by the Industrial Disputes Act, 1947 and Tamil Nadu Industrial Establishment (Conferment of Permanent Status of Workman) Act. The action of the II Party/Management in terminating the services of the Petitioner, though she had been employed from September, 1994 to April, 1995 is violative of Section 25N and 25F of the Industrial Disputes Act, 1947. The II Party/Management is not justified in refusing to confer permanency on the Petitioner, even though the work done by the Petitioner

was permanent and perennial in nature. The Petitioner is a widow who has a large family to support and due to the action of the II Party/Management in terminating the services of the Petitioner, her family has been facing severe economic and mental hardship. At the time of termination of her service the Petitioner was paid Rs 550 per month as wages. The permanent employees of the II Party/Management in the last grade were paid Rs 2350 per month. Therefore it is prayed that this Hon ble Tribunal may be pleased to direct the II Party/Management to reinstate the Petitioner in service and regularise and absorb her service in the II Party/Management and pay all her back wages and monetary benefits as was paid to the permanent workmen with all other consequent benefits including seniority etc.

3 The averments in the Counter Statement filed by the II Party/Management Air India Chennai (hereinafter refers to as Respondent) are briefly as follows —

The Respondent denies all the allegations and averments in the Claim Statement filed by the Petitioner except that those are specifically admitted herein. The dispute raised by the Petitioner against this Respondent is not maintainable since there was no employer-employee relationship between the Respondent and the Petitioner at any point of time. On this ground the dispute is liable to be dismissed in limine. The Petitioner has raised this dispute after a delay of almost six years and this dispute is liable to be dismissed on the ground of delay and laches also. The Respondent is a company registered under the provisions of the Companies Act 1956. The Respondent/Management has got a number of permanent workers for attending to normal operations. The Respondent/Management according to their requirements engaged contractors for cleaning the Air India premises at Chennai. During the period mentioned by the Petitioner the Respondent had arrangements with the contractors for carrying out the cleaning of their premises. The then contractors engaged their own men/women and supplies labourers to do the work in the offices of the Respondent/Management at Chennai. As per the said agreement the Respondent/Management did not have any control or supervision over the workers engaged by the contractors. The contractors undertook to supply labour for attending to do the cleaning job. The Respondent/Management at no point of time engaged the Petitioner. Since the Respondent/Management had arrangements with contractors as per the requirement the Respondent/Management used to inform the contractors to supply manpower. The Respondent/Management for engaging the contractors had taken out registration under the Contract Labour (Abolition and Regulation) Act from the Labour Department Government of India. Since the Respondent has taken out registration for engaging contract labour through the contractors the contract between the Respondent and the contractors were valid one. It is denied that the Respondent had ever engaged the Petitioner to do the cleaning job and puts the Petitioner to strict proof of the same. Since the Petitioner claims that she had worked during the period mentioned in the petition she might have worked with the contractors who had been entrusted with the job of housekeeping of the Respondent premises during that period. However there was no employer and employee relationship between the Respondent and the Petitioner. A perusal of the documents available with the Respondent/Management does not indicate that the Petitioner was at any time an employee of the Respondent/Management. The wages were paid to the contract labourers only by

their employers i.e. the respective contractors. In the circumstances the records of the Respondent do not reveal any wages paid or any contributions made by the name of the Petitioner. The records of the Respondent did not reveal that there was at any time any master and servant relationship between the Petitioner herein and the management. The Respondent never employed the Petitioner and hence the question of alleged termination does not arise. The employees of the contractors were all working under the personal control and supervision of the supervisors employed by the said contractors. The engagement of the contract labour was handled completely, independently by contractors and the Respondent/Management had no say in their employment. The conditions of service of the contract labour was determined and fixed only by the said contractors. Disciplinary control over the contract labourers also vested only with the contractors concerned. Thus in all respects the contractors were the employers of the said labourers engaged by them. Hence the question of application of provisions of Industrial Disputes Act 1947 or any other enactments do not arise. If at all any person is aggrieved he/she has to take up the matter only with the said contractors. The respondent is in no way connected with the alleged termination of services of contractor's workmen. As regards the petition filed by the Petitioner before the Labour Commissioner is concerned this Respondent filed the counter in the said petition explaining the above facts. The conciliation ended in a failure and subsequently the same was referred to this Hon ble Tribunal for adjudication. As regards the averments in the Claim Statement of the Petitioner regarding issue of passed by Bureau of Civil Aviation Security to the Petitioner is concerned since the Airport is declared as a restricted area and it is a pre-requisite to process passes issued by the Bureau of Civil Aviation Security it is possible for Air India as a principal employer might have facilitated the issuance of Bureau of Civil Aviation Security passes to the contract workmen for their working in Air India premises at Airport as and when necessary. The Respondent neither appointed nor terminated the Petitioner as alleged. Hence the question of retrenchment within the meaning of Section 2(oo) or violation of Section 25N or 25F of the Industrial Disputes Act 1947 does not arise at all. It is denied that the work alleged to have been done by the Petitioner was permanent and perennial in nature. The allegations that the Respondent employees new workers for a short period and again engaging fresh workers for the same work in order to deny the benefit of permanency are denied as false and baseless. The respondent puts the Petitioner to strict proof of the same. The Respondent did not have any direct relationship with the contract labourers. The contract labourers were engaged through the contractors depending upon the requirement. Hence violation of provisions of Industrial Disputes Act 1947 or any other enactment does not arise at all. The averments contained in para 9 of the claim petition are made just to gain sympathy of this Hon ble Court. The casuals directly engaged by the Respondent were paid a sum of Rs 61 per day whereas the Petitioner claimed to have received monthly wages of Rs 550. This itself clearly establishes that her claim of employment with the Respondent is baseless. In the circumstances it is prayed that this Hon ble Court may be pleased to dismiss the dispute as not maintainable.

4 When the matter was taken up finally for enquiry, no one has been examined as a witness on either side. No

document has been filed on either side as exhibits. The learned counsel on their side have advanced their arguments.

5. The point for my consideration is—

“Whether demand of the workman Ms. Parvathy that she may be reinstated in service and absorbed as regular workman of Air India is justified? If so, to what relief is the workman entitled and from what date?”

Point :

This dispute referred to for adjudication is in respect of demand of the Petitioner Ms. Parvathy for reinstatement in service and absorption as a regular workman of the Respondent/Management, Air India at Airport, Chennai. It is the contention of the Petitioner that she was employed continuously from 1993 to 1995 at the monthly salary of Rs. 550 and that she was terminated from service in the year 1995 without any notice or intimation so as to deny her permanency. It is also her further contention that a sum of Rs. 60 towards provident fund Rs. 9 towards ESI have been deducted in her salary by the Respondent/Management and as such she was a permanent worker. She would further contend that she was not permitted to work further, even though the work was available for her continuous employment and that such termination of the Petitioner/Workman is within the meaning of Section 2(oo) of the Industrial Disputes Act, 1947 and prior to termination of the services of the Petitioner, the mandatory conditions precedent laid under section 25N and 25F of the Industrial Disputes Act have not been followed by the Respondent/management. She has further contended that the Petitioner has been issued with temporary pass by the Government of India Bureau of Civil Aviation Security. The learned counsel for the Petitioner has also advanced her argument as such and would contend that having termination the Petitioner from service without adopting the procedure under section 25F of issuing notice and compensation amounts to violation of provisions of Industrial Disputes Act, 1947 by the Respondents/Management and since the Petitioner has worked continuously for nearly 240 days, she must be confined with permanent status and should have been absorbed as a permanent employee of the Respondent/management by reinstatement in service, since the termination of service of the Petitioner amounts to retrenchment under section 2(oo) of Industrial Disputes Act.

6. The learned counsel for the Respondent would contend that the Respondent/management have never engaged the Petitioner for doing the clearing service in the Chennai Airport and if at all, she has been engaged, she would have been engaged only through contractor with whom the Respondent/Management had contractual agreement for providing manpower for doing such work in the Chennai Airport. Therefore, there is no employer and employee relationship between the Respondent/Management and the Petitioner at any point of time. In the Claim Statement itself, no details have been given with regard to the alleged appointment as well as termination of service of the Petitioner by the Respondent/management. Further the Petitioner has not proved that she has worked for 240 days continuously to claim the benefit under section 25F of the Industrial Disputes Act. Since there is no relationship between the Respondent and the Petitioner as employer and employee or master and servant, and the

Respondent has neither appointed nor terminated the Petitioner from service, the question of retrenchment under section 2(oo) of the Industrial Disputes Act does not arise. So, the non-issue of notice or non-payment of compensation does not arise in this case to attract the provisions of Section 25F of the Industrial Disputes Act, 1947. Only when the employer terminates the services of an employee, the retrenchment under section 2(oo) will arise. It is not applicable to the present facts of this case. Further, the Petitioner has raised this dispute after a long time of six years and no reason has also been given for this undue delay. In the Claim Statement also, the delay has not been explained. He would further contend that the Petitioner has not let in any oral or documentary evidence to substantiate her stand of employment continuously for a period of more than 240 days in a year immediately preceded to the date of termination to claim the benefit under section 25F of the Industrial Disputes Act. The learned counsel for the Respondent has relied upon the decision of the Supreme Court in a case reported as 2002 1 LLJ SC between Assistant Executive Engineer Karnataka and Shivalinga to put forth his contention that long delay in raising the industrial dispute would be fatal to the case and on that basis, it is not possible for this Tribunal to adjudicate the dispute appropriately and the situation of that nature would render the claim to have become stale. He would further rely upon another decision of the Supreme Court in a case reported as 2002 FJR 100 397 Range Forest Officer Vs. S.T. Hadimani, in support of his contention that the workman claiming to have worked for 240 days, the onus on the workman to prove the claim by proof of receipt of salary or wages for 240 days or record of appointment or engagement for the period. It is his further argument that on the basis of these decisions, the Petitioner has failed to prove his claim to have reinstatement in service by the Respondent/Management in their establishment and hence, her claim has to be dismissed with cost.

7. Though the Petitioner had made a claim for reinstatement in service by the Respondent/Management in their establishment, as stated by the learned counsel for the Respondent/Management in his argument, no particulars has been given in the Claim Statement and no oral and documentary evidence has let in before this Tribunal to show that the Petitioner has been employed on a particular date by the Respondent/Management for doing the work of cleaning in the Chennai Airport and in the premises of II Party/Management Air India, Chennai. No plea has been made in the Claim Statement as to how the alleged termination of the Petitioner from service and on what date it took place. It is merely stated in the Claim Statement that the Petitioner was employed as a cleaner by the Respondent/Management at the Madras Airport at Chennai from 1993 to 1995. It is not her case that the Respondent/Management had ever issued any order of appointment for the same and also when her services were alleged to have been terminated by the Respondent/Management there being an order of termination from service has been issued to her by the Respondent/Management. For the averment of the Petitioner in her Claim Statement that she was paid a sum of Rs. 550 as monthly salary and a sum of Rs. 60 for provident fund and Rs. 9/- for ESI have been deducted by the Respondent/Management, no evidence worth considering either oral or documentary has been placed before this Hon'ble Tribunal. Only on the basis of such particulars mentioned in the Claim Statement, the Petitioner has claim to be a permanent worker of the Respondent/Management. On the other hand, it is the

contention of the Respondent/Management as well as the argument advanced by the learned counsel for the Respondent/Management that the Petitioner was never engaged/employed by the Respondent/Management in the Chennai Airport under the control of Air India and its premises for doing the cleaning work and there was no employer and employee relationship between the respondent and the Petitioner at any point of time and it is for the Petitioner to prove her case with acceptable evidence. In spite of such contention of the Respondent/Management in their Counter statement, the Petitioner has been not chosen to let in any oral or documentary evidence in this case to establish her stand as an employees Employed by the Respondent/Management as a cleaner.

8. It is the definite contention of the Respondent/Management in their Counter Statement that they used to engage labourers for doing the cleaning work in their premises at the Chennai Airport only through contractors who entered into contract with them for supplying manpower for such work and those casual employees engaged by the contractor used to be paid salaries by the contractors themselves and the Respondent/Management have no direct control over such people employed by the contractor and as and when there is requirement for such labour, their contractor used to provide manpower for doing that work. This has not been denied by petitioner by filing any reply statement to the Counter Statement. The learned counsel for the Respondent has cited a case decided by the Supreme Court reported as 2002 FJR Vol. 100 397 Range Forest Officer, Vs. S.T. Hadimani in support of his contention that the Petitioner/Workman has to prove with acceptable evidence that she had worked for more than 240 days in the year preceding her termination and it is the definite contention of the Respondent/Management that there is no relationship between the management and the Petitioner as employer and employee. In the above cited case the Hon'ble Supreme Court has held that 'since the claim of the Respondent that he worked for 240 days was denied by the management, it was for the Respondent to lead evidence to show that he had in fact, worked for 240 days. In the absence of proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period, the mere filing of affidavit was not sufficient evidence for the Labour Court to come to the conclusion that the Respondent had in fact worked for 240 days.' This decision of the Hon'ble Supreme Court is squarely applicable to the facts of this present case. Further in this case, as it is filed in that case in dispute, not even an affidavit has been filed by the Petitioner to show that she has worked for 240 days continuously immediately preceding to the alleged termination of service. No allegation to that effect also has been made in the Claim Statement. When especially the Respondent is disputed the relationship between them and the Petitioner as employer and employee and have stated that if at all the petitioner has been employed for cleaning work in the Respondent premises, it would have been only through contractors and the contractors only could have been paid her wages and there is no question of violation of Section 25F of the Industrial Disputes Act. it is for the Petitioner/Workman to prove with acceptable legal evidence that she was employed continuously by the Respondent/Management for more than 240 days during the one year period immediately preceding to the date of alleged retrenchment from service. As already stated there is no plea available to that extent in the Claim Statement and no

evidence by way of oral or documentary to show as proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for that period. It is also not the contention of the Petitioner/Workman that there are enough documentary evidence available with the Respondent/Management to show her direct employment under the Respondent/Management for the alleged period to conclude that she was a permanent worker of the Respondent/Management. Even for her averment in the claim petition, that she was paid a sum of Rs.550/- as monthly salary and a sum of Rs.60/- towards provident fund and Rs 9/- towards ESI have been deducted from her salary by the Respondent/Management no evidence worth credit has been produced in this case. Under such circumstances, as it is contended by the learned counsel for the respondent, the petitioner has been employed only as the workman engaged by the contractor who had entered into a contract with the Respondent / Management for providing manpower for such work that was attended to by the petitioner in the Respondent/Management premises as and when required by them. Therefore, as rightly contended by the learned counsel for the Respondent, there is nothing to reveal that there was any relationship between the Respondent/Management and the petitioner as master and servant at any point of time. The specific averment in the Counter Statement that the Petitioner would have been employed by the contractors and such employees of the contractors were all working under the personal control and supervision of the supervisors employed by the said contractors and that the engagement of the contract labour was handled completely, independently by contractors and the Respondent/Management had no say in their employment had not been denied or disputed by the Petitioner/Workman. From this, it can be said the conditions of service for the contract labour was determined and fixed only by the said contractor and the said contractor only vested with disciplin control over the contract labourers. So, those contractors only are the employers of the said labourers engaged by them. Under such circumstances, the question of application of provisions of Industrial Disputes Act or any other enactments do not arise, as it is rightly contended by the Respondent/Management in their Counter Statement. So, it can be said that the Respondent/Management is no way connected with the alleged termination of services of contractors workman. In view of these state of affairs, it cannot be said that the alleged action of the Respondent/Management in terminating the services of the Petitioner is violative of Section 25N and 25F of the Industrial Disputes Act. It is the further contention of the Petitioner/Workman that she was issued with temporary pass by the Government of India, Bureau of Civil Aviation Security, since she happens to be a workman employed by the Respondent/Management in their establishment. For this, the Respondent has stated in their Counter Statement that since the airport is declared as restricted area and it is prerequisite to possess passes issued by Bureau of Civil Aviation Security, the Respondent/Management might have facilitated the issuance of Bureau of Civil Aviation Security passes to the contract workman for their working in Air India premises at airport as and when necessary and the said processing of passes for the Petitioner by the Respondent/Management to enable her to work in the Air India premises at airport will not entail the Petitioner to claim the status of a permanent worker under the Respondent/Management. This contention of the Respondent/Management is quite acceptable.

9 The petitioner is said to have been non employed subsequent to November, 1995. It is not averred in the Claim Statement of the Petitioner as to when she has raised the Industrial Dispute under section 2A of the Industrial Disputes Act, 1947 before the Assistant Labour Commissioner (Central) Chennai. This matter has been referred by the Government of India as an industrial dispute for adjudication by this Tribunal by order dated 16.3.2001. From this, it is seen that the Petitioner has moved the authority after a long delay of nearly six years. The learned counsel for the Respondent had argued that the Petitioner has chosen to raise this industrial dispute after a delay of almost six years and on that ground of delay and laches, the dispute is liable to be dismissed in limine. For this contention, he has cited a case decided by the Supreme Court of India reported as 2002 1 LLJ pg. 457 between Assistant Executive Engineer, Karnataka and Sivalinga. In that case, the Hon'ble Supreme court was pleased to hold that 'where there was a serious dispute or doubt with regard to relationship of employer and employee between the parties to the dispute, records of employer being relevant, the long delay would come in the way of maintenance of the same. In such circumstances, to make them available to

Labour Court or Industrial Tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale and such a long delay would be fatal to the case.' This decision of the Supreme Court is squarely applicable to this case also. Under such circumstances, in view of the above findings, it can be held that the demand of the workman Ms. Parvathy that she may be reinstated in service and absorbed as a regular workman of Air India is unjustified. Hence, the concerned workman is not entitled to any relief. Thus the point is answered accordingly.

10 In the result, an Award is passed holding that the Petitioner/Workman is not entitled for any relief. No Cost. (dictated to Stenographer, transcribed and typed by him, corrected and pronounced by me in the open court on this day the 27th March, 2002.)

K.KARTHIKEYAN, Presiding Officer

Witnesses Examined:

On either side	None
----------------	------

Documents Marked

On either side	-	NIL
----------------	---	-----

